

(2013) 11 MP CK 0034
In the Madhya Pradesh High Court
Case No : Second Appeal No. 367 of 2012

K.P. Singh

APPELLANT

Vs

Smt. Moolan Bai

RESPONDENT

Date of Decision : 13-11-2013

Acts Referred:

Citation : (2013) 11 MP CK 0034

Hon'ble Judges : K.K. Trivedi, J

Bench : Single Bench

Advocate : Nirmala Raikwar, for the Appellant;

Final Decision : Allowed

Judgement

K.K. Trivedi, J.—Heard on the question of admission. The second appeal is admitted on the following substantial question of law:

A. Whether the lower appellate court was right in rejecting the application u/s 5 of the Limitation Act for condonation of delay in filing the first appeal and was further right in dismissing the appeal of the appellants as barred by limitation.

2. Issue notice of this appeal to respondents.

3. Shri Rakesh Khare, learned counsel for the respondents No. 1, 2 and 4 appeared and accepted the notice on behalf of the said respondents and waves service.

4. It is contended by the learned counsel for the respondents that an application I.A. No. 11953/2013 is made for impleadment of the applicant of the said application as respondent in the present appeal. Such application is not opposed by the learned counsel for the appellants. The same is allowed.

5. Let the applicant of IA No. 11953/2013 be impleaded as a respondent in the second appeal.

6. With the consent of learned counsel for the parties, this second appeal itself is

heard finally.

7. This appeal has been filed challenging the order dated 13.5.2008 passed in MJC No. 39/2006 by which the application filed by the appellants u/s 5 of the Limitation Act for condonation of delay in filing the first appeal has been rejected.

8. It is contended that though the facts were brought to the notice of the first appellate court that the appellant No. 2 was ill and was taking treatment and such evidence was produced by the appellants, but the application for condonation of delay was not considered in appropriate manner and the same was rejected. It is contended that the delay in filing the first appeal was liable to be condoned and the appeal was liable to be considered on merit.

9. Learned counsel appearing for the respondents No. 1, 2 and 4 has not seriously opposed the claim made by the appellants in this appeal.

10. The Apex Court in several cases has considered this aspect and has held that a lenient view should be taken in the matter of condoning the delay in filing the appeals where the appeals are required to be decided on merit. Looking to the law laid down by the Apex Court, it was necessary on the part of the first appellate court to condone the delay in filing the first appeal by the appellants.

11. In view of the aforesaid, this appeal is allowed. The order dated 13.5.2008 passed by the first appellate court in MJC No. 39/2006 is hereby set aside. The application filed by the appellants for condonation of delay in filing the first appeal is hereby allowed. The first appeal of the appellants is restored on its original number and is directed to be decided expeditiously, preferably within a year from the date of receipt of the certified copy of the order passed today. There shall be no order as to costs.