
(2017) 04 RAJ CK 0205
In the Rajasthan High Court
Case No : 14014 of 2016

Narayan Lal & Anr.

APPELLANT

Vs

Sohan Lal & Ors.

RESPONDENT

Date of Decision : 06-04-2017

Acts Referred:

[Code of Civil Procedure, 1908](#), [Order 39 Rule 1](#), [Order 39 Rule 2](#) -
[Limitation Act, 1908](#), [Section 5](#)

Citation : (2017) 04 RAJ CK 0205

Hon'ble Judges : Dinesh Mehta

Bench : SINGLE BENCH

Advocate : G.S. Rathore

Judgement

1. By way of the present writ petition, the petitioner has laid a challenge to the order dated 16.08.2016, passed by the Additional District Judge No.1, Bhilwara (hereinafter referred as "the Appellate Court"), in Appeal No.02/2013, whereby appeal filed by the petitioner-appellant has been rejected by the Court on the ground of limitation.
2. Facts leading to the passing of impugned order dated 16.08.2016 are that the plaintiff filed a suit for permanent injunction along with an application seeking Temporary Injunction, which was allowed by the learned Civil Judge (Junior Division), Gangapur (hereinafter referred to as "the Trial Court") vide its order dated 03.03.2012.
3. Petitioners-defendants preferred an appeal after passing of the period of limitation, along with an application under Section 5 of the Limitation Act seeking condonation of the delay in filing the appeal.
4. The reason set out in the application seeking condonation of delay in filing the appeal by the petitioners were that they were busy in taking care of their relative Sri Badri Lal S/o Kalu Lal Brahmin, who was residing at Ujjain and therefore, they

could not come to Bhilwara during the relevant period when the matter was decided; their counsel unfortunately did not inform the petitioners about the Injunction Order dated 03.03.2012 passed against them.

5. While dealing with the application for condonation of delay, the Appellate Court found that the reasons given in the application are untrustworthy, frivolous and not supported by any evidence and, therefore, reject the said application under Section 5 of the Limitation Act. As a necessary corollary, the appeal filed by the appellant has also been dismissed.

6. Counsel for the petitioner submitted that the Trial Court ought to have decided the application seeking condonation of delay objectively. He contended that the petitioners had stated valid reasons/cause for the delay in filing the appeal which were on account of ailment of Badri Lal. He urged that the Court should apply liberal view, while deciding the application under Section 5 of the Limitation Act, inasmuch as nobody wishes gets to gain by causing delay in taking legal remedies and at least in the present case, delay caused in filing appeal was bonafide.

7. I have heard learned counsel for the petitioners and perused the material available on record.

8. A perusal of the application under Section 5 of the Limitation Act filed by the petitioners reveals that the reasons stated therein were not valid or germane for not taking care of their case. The assertion of the petitioners that they were busy in taking care of one Shri Badri Lal S/o Kalu Lal Brahmin at Ujjain is a lame excuse and does not sound palatable.

9. The learned Court below has dealt with the arguments of the petitioners and rejected the application under Section 5 of the Limitation Act. This Court finds no valid reason to interfere in the order under challenge, whereby the appeal of the petitioners against the order dated 03.03.2012 passed under Order 39 Rules 1 & 2 CPC has been rejected.

10. A perusal of the order dated 03.03.2012 reveals that the Trial Court had passed an innocuous order permitting the plaintiff to use the way situated in Aarji No.878. The order passed by the Trial Court meets the ends of justice.

11. In view of the above, the petition for writ inviting interference, invoking extra ordinary supervisory jurisdiction of the Court fails.