
(2007) 03 MP CK 0036
In the Madhya Pradesh High Court

Nathuji Dhakad and Another

APPELLANT

Vs

Sohanlal Agrawal

RESPONDENT

Date of Decision : 29-03-2007

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 151, 152
Limitation Act, 1963 — Section 5

Citation : (2007) 3 MPHT 283

Hon'ble Judges : N.K. Mody, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

N.K. Mody, J.—Being aggrieved by the judgment and decree dated 21-2-2005, passed by District Judge, Ratlam, in Civil Appeal No. 9-B/04, whereby appeal filed by the petitioner against judgment and decree dated 14-5-2004, passed by IInd Civil Judge Class-II, Ratlam, in Civil Suit No. 39-B/2004, which was modified vide judgment and decree dated 28-7-2004, was dismissed, the present revision petition has been filed.

2. Short facts of the case are that a suit was filed by the respondent against the petitioners, wherein it was alleged that petitioners purchased fertilizers and seeds from the respondent and agreed to pay a sum of Rs. 5,750/- on 18-5-1999. It was further alleged in the suit that the petitioners further purchased the goods of Rs. 2,520/-, but the amount was not paid, hence the suit was filed.

3. The suit was contested by the petitioners on various grounds and it was prayed that the suit be dismissed.

4. After framing of the issues and recording the evidence learned Trial Court decreed the suit, against which an appeal was filed, which was numbered as Civil Appeal No. 9-B/04, and was dismissed vide judgment dated 21-2-2005, holding that appeal is barred by time, against which present revision petition has been

filed.

5. Learned Counsel for the petitioners submit that learned Trial Court passed the judgment and decree dated 14-5-2004. An application for correction of decree was filed by the respondent on 14-6-2004 u/s 152 of CPC. The application was allowed vide order dated 28-7-2004. The certified copy was obtained by the petitioners on 9-9-2004 and thereafter an appeal was filed on 10-9-2004. It is submitted that in the circumstances the appeal was within time and learned Appellate Court committed error in holding that appeal is barred by law of limitation. It is submitted that in the facts and circumstances of the case this revision petition deserves to be allowed and judgment and decree passed by learned Appellate Court deserves to be set aside.

6. Learned Counsel for respondent submits that the learned Appellate Court has rightly passed the judgment and decree, holding that the same is barred by law of limitation. It is submitted that limitation for filing the appeal starts to run from the date of judgment and decree, i.e., 14-5-2004 and it is nothing to do with the application for correction filed on 14-6-2004, which was allowed on 28-7-2004. It is submitted that if the time period is computed from 14-5-2004, on the face of it appeal is barred by law of limitation. Reliance was placed on a decision of Thanuvan Appukuttan Vs. P.N. Gopala Pillai and Another, , wherein Kerala High Court has held that: "when a decree is amended u/s 151 or 152 of the CPC (1908), time does not run from the date of amendment for filing the appeal. Under Article 156 of the Limitation Act IX of (1908), or under Article 116 of the Limitation Act, 1963 the period of limitation for filing an appeal in the High Court commences from the date of the decree or order. Order 20 Rule 7 of the CPC provides that "the decree shall bear date the day on which the judgment was pronounced." The date of the decree is therefore, the date of the judgment whatever may be the date on which the decree is signed by the Judge. Any amendment made in a decree must relate back to the date of the decree. There is no decree bearing the date on which it is amended. The amendment of a decree u/s 151 or 152, CPC does not bring about any change in the date of the decree and the time for filing an appeal against the decree therefore runs from the date of the decree and not from the date on which it is amended. Even if the appeal is against that portion of the decree that it amended, and there is no alteration in the date of the decree it will be a fit case for excusing delay u/s 5 of Limitation Act".

7. From perusal of the record, it is evident that the petitioners has not filed any appeal within 30 days from the date of judgment and decree dated 14-5-2004, and has computed period of limitation from 28-7-2004, when the application for correction of decree u/s 152 of CPC filed by respondent was allowed, while the period of limitation was required to be computed from 14-5-2004, I.e., from the date of judgment and decree passed by the learned Trial Court.

8. Since the decree was amended, therefore, there could have been sufficient ground for condoning the delay u/s 5 of Limitation Act, but unfortunately in this

case petitioner did not move any application before the learned Appellate Court. In the circumstances no illegality has been committed by the learned Court below, which can be corrected by this Court.

9. In view of this revision petition stands dismissed. No order as to costs.