

(1951) 07 RAJ CK 0004

In the Rajasthan High Court

Case No : Civil Miscellaneous Case No. 21 of 1950

Nauratan Mal and Others

APPELLANT

Vs

Hari Singh and Others

RESPONDENT

Date of Decision : 26-07-1951

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 19 Rule 3
Limitation Act, 1908 — Section 5

Citation : AIR 1952 Raj 90

Hon'ble Judges : Wanchoo, C.J.;Bapna, J

Bench : Division Bench

Advocate : Tej Singh Mehta, for the Appellant; H.S. Mardia, for the Respondent

Final Decision : Dismissed

Judgement

Wanchoo, C.J.—This is an application by Nauratan Mal, Vallabh Dass, and another u/s 5 of the Limitation Act, praying that the delay in the filing of the appeal be condoned. The decree against which the appeal is filed was made on the 17th of March, 1949. The application for copy was made on the 14th of April 1949, and copy was ready on the 23rd of April, 1949, and was taken away on the same day. The appeal was filed on the 4th of July, 1949. It was within time upto the 25th of June, 1949, and was thus filed 9 days beyond time.

2. The applicants filed an affidavit in support of their application, in which they showed the following grounds for the delay: (1) Nauratan Mal had been ill from before the 19th of May, 1949, and remained in hospital from the 19th of May, 1949 to the 23rd of June 1949 and was bedridden. (2) The father of the counsel, who was appearing in the trial Court, died about the 19th of May, 1949 and the counsel himself fell ill on the 25th of May 1949. (3) As soon as Nauratan Mal came out of the hospital, he instructed his son Vallabh Das, who is also an appellant, to file the appeal. Vallabh Das went to Udaipur on the 29th of June 1949; but there was curfew in Udaipur on the 30th of June and 1st and 2nd July 3rd of July was a Sunday, and, therefore, the appeal was filed on the 4th of July,

1949.

3. Learned counsel for the opposite party, however, urges in the first place, that the affidavit, which has been filed, is no affidavit at all, or at any rate, is of no value, and that the grounds disclosed in it are entirely insufficient to make out a case for any indulgence in favour of the applicants.

4. The affidavit, in this case, has certainly not been properly sworn. The endorsement merely is that Vallabh Das read the affidavit from the beginning to the end, and admitted that the facts mentioned in it were correct and entered on his instructions. This is, in our opinion, quite inadequate for the purpose. It is the duty of a person swearing an affidavit to state separately what parts of it he is swearing on personal knowledge and what parts on belief or information received. However, we need not throw out the application on this ground alone, as we shall show just now that accepting the affidavit, even as it stands, as correct, it is quite insufficient to make out a case in favour of the applicants.

5. We have already mentioned that the copy was taken by the applicants as far back as the 23rd of April, 1949, but no attempt was made to file the appeal earlier than the end of June. No doubt an applicant praying for indulgence u/s 5 of the Limitation Act has only to explain the delay of those days which are beyond the period of limitation, and the antecedent inaction or negligence is not material, and should not be taken into consideration. We may, in this connection, refer to the case of Karali Charon Sarma Vs. Apurba Krishna Bajpayi and Others, with which we respectfully agree.

6. In the present case, however, the applicants have practically given no good reason for the delay which took place between the 26th of June and the 3rd of July. The illness of Nauratan Mal or of his counsel is quite immaterial, because Nauratan Mal had got well by the 23rd of June, and we do not know when the counsel got well. It should also be remembered that the certificate, which has been filed in support "of Nauratan Mal's illness, is merely to the effect that he had been suffering from Amoebic Hepatitis. It does not show that Nauratan Mal was not in a position to give direction to his son about filing the appeal before the 23rd of June, 1949, nor does it show that Nauratan Mal was so seriously ill that he could not look after his affairs before the 23rd of June, 1949. Vallabh Das is also an appellant, and he apparently was quite well. There was, therefore, no good reason in this case for the appeal not having been filed by the 25th of June, 1949.

7. As to the delay from the 26th of June onwards, it is the duty of the applicants in such cases to explain each day's delay satisfactorily and if, they fail to do so, they, cannot get the benefit of Section 5 of the Limitation Act. In this case the affidavit discloses no reason for the delay from the 26th of June to the 29th of June. There is no explanation why Vallabh Das could not reach Udaipur earlier than the 29th of June. Further, there is no reason why, if Vallabh Das had reached Udaipur on the 29th of June, he could not file the appeal on that very

day. The reason for not filing the appeal on the 30th of June, and 1st and 2nd of July is that there was curfew order in force in Udaipur. It is not stated, however, that the curfew order was in force for all the twenty-four hours; for example, if the curfew order was in force for the night, there is no reason why the appeal could not be filed in day time on any of these three days. It is also not stated that the Courts were closed on these three days on account of curfew order. There is thus no satisfactory explanation whatsoever for the delay of nine days in filing the appeal. The applicants appear to be well to do persons and we do not see why they should not have been able to arrange for the filing of the appeal before the period of limitation. We, therefore, see no reason to extend the period of limitation in this case, and reject the application u/s 5 of the Limitation Act. In consequence, the memorandum of appeal is also rejected.