

(2011) 08 RAJ CK 0085

In the Rajasthan High Court

Case No : Civil Miscellaneous Restoration Application No. 06039 of 2011 in Civil First Appeal No. 02520 of 2003

Om Prakash

APPELLANT

Vs

Chain Singh and Others

RESPONDENT

Date of Decision : 01-08-2011

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 149, 151
Limitation Act, 1963 — Section 5

Citation : (2011) 08 RAJ CK 0085

Hon'ble Judges : Narendra Kumar Jain, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Narendra Kumar Jain, J.—Heard learned counsel for the Appellant on the application u/s 5 of the Limitation Act for condonation of delay of 1272 days in filing application for restoration of first appeal.

2. Briefly stated the facts of the case are that the Appellant filed first appeal before this Court on 26.08.2003 against judgment and decree dated 05.08.2003 passed by Additional District Judge, Bandikui, whereby Plaintiff-Respondents No. 1 to 3's suit for cancellation of sale deed dated 23.08.1995 and for permanent injunction was decreed. No. court fees was paid on first appeal and an application u/s 149 read with Section 151 CPC was filed for extension of time to deposit court fees. The application remained pending for almost more than four years and during that period also, court fees payable on appeal was not filed. The matter was listed before this Court on 29.10.2007. This court again granted one week's time to deposit the court fees on first appeal, failing which first appeal as well as stay application were ordered to be dismissed automatically without reference to the Court. Order dated 29.10.2007 passed by this Court is reproduced as under:

Learned counsel for the Appellant has filed an application u/s 149, CPC to extend

the time to deposit the remaining Court fee. He prays that he may be granted one week's time. The appeal was filed way back on 26.08.2003. However, in the interest of justice, I further grant one week's time, as prayed for by the learned counsel for the Appellant to deposit the remaining Court fee, failing which the appeal as well as the stay application, filed therewith shall stand dismissed automatically without any further reference to the Court.

The application u/s 149 CPC stands disposed of.

3. Since required court fees was not paid, therefore, as per peremptory order dated 29.10.2007, a formal order of dismissal of the appeal as well as stay application was passed by Deputy Registrar(Judicial) of this Court on 18.12.2007.

4. Order dated 29.10.2007 was passed in presence of learned counsel for the Appellant, but neither court fees was paid, nor any application for further extension of time was filed or any application for restoration of the appeal was filed in time.

5. The present application for restoration of the appeal alongwith an application for condonation of delay in filing the restoration application was filed before this Court on 23.05.2011. Registry has pointed out that the application is barred by 1272 days.

6. Learned counsel for the Appellant has explained delay of 1272 days in filing restoration application in Para No. 1 to 4 of the application u/s 5 of the Limitation Act, which are reproduced as under:

1. That on 29.10.2007 Hon''ble Court passed the order in respect of Court fee. As per the order of the Hon''ble Court, court fee was required to be filed within a period of one week, failing which the Appeal as well as the stay application, both were ordered to be dismissed. After completion of one week, in compliance of the Court's order dated 29.10.2007, the appeal and stay application have been dismissed by the Deputy Registrar(Judicial) vide order dated 18.12.2007.

2. That the court fee was given to Munshi Radhey Shyam but he did not inform in this respect that the court fee was not deposited. Unfortunately, on account of his own problem, he committed the suicide. His death took place and court fee was not deposited. Appellant was rest assured that the court fee would have been deposited by Munshi Radhey Shyam since the assurance was given to him that he will deposit the court fee, but now it is found that No. court fee had been paid. On account of Radhey Shyam, the Appellant has not been communicated in respect of non deposition of court fee.

3. That the Appellant is a poor man. He is illiterate and on account of non communication, the court fee has not been paid. He will be ruined on account of dismissal of the appeal. The present appeal is first appeal and there are legal questions of facts and law involved, as such this appeal can be decided.

4. That the reason for not filing the court fees was unavoidable. On account of

death of Radhey Shyam, the Appellant has not been communicated in respect of dismissal of appeal. As soon as he came to know about dismissal of the appeal, he contacted his counsel and immediately thereafter the restoration application has been filed. However, some delay has been caused in filing the restoration application, which in the facts and circumstances of the case, deserves to be condoned.

7. The above-quoted paras will show that explanation furnished by the Appellant is that court fees was given to Munshi Radhey Shyam, but he did not inform in this respect that the court fees was not deposited. Unfortunately, on account of his own problem, he committed suicide. His death took place and court fees was not deposited.

8. Learned counsel for the Appellant has neither mentioned date of payment of court fees to Munshi Radhey Shyam, nor he has mentioned the date of death of Munshi Radhey Shyam in the application u/s 5 of the Limitation Act. Order was passed way back on 29.10.2007, in presence of learned counsel for the Appellant, therefore, both the dates were very much relevant, but the same have not been furnished in the present case. It is relevant to mention that the court fee has not been paid on the appeal till date and this fact has not been disputed by learned Counsel for the Appellant also.

9. The appeal was filed way back in the year 2003, without payment of court fee. The same was not paid during pendency of the appeal till 2007, when last opportunity was granted to learned Counsel for the Appellant to file court fee with peremptory order and thereafter, application for restoration was also not filed in time and the same was filed after a delay of 1272 days and even the court fees has not been paid alongwith this application for restoration of the appeal or till date.

10. After considering all the facts and circumstances of the case and submissions of learned counsel for the Appellant, I am of the view that there is No. reasonable explanation given by the Appellant, so as to say that a sufficient cause is made out to condone the delay, in the facts and circumstances of the present case. In my view, there is No. sufficient cause to condone the delay of 1272 days in filing the application for restoration of the appeal and the same deserves to be dismissed.

11. Consequently, application u/s 5 of the Limitation Act for condonation of delay in filing the application for restoration of the appeal is dismissed.

12. Consequently, application for restoration of the appeal is also dismissed.