

(1974) 04 DEL CK 0010

In the Delhi High Court

Case No : First Appeal No. 83 of 1973

Panchsheel Electronic Corporation

APPELLANT

Vs

Jupitor General Insurance Co. Limited and Another

RESPONDENT

Date of Decision : 05-04-1974

Acts Referred:

Citation : (1975) 11 DLT 79 : (1974) 2 ILR Delhi 239 : (1974) RLR 453

Hon'ble Judges : Yogeshwar Dayal, J; V.S. Deshpande, J; T.V.R. Tatachari, J

Bench : Full Bench

Advocate : R.S. Oberoi, Subhash Oberoi and R.P. Kathuria, for the Appellant;

Judgement

V.S. Deshpande, J.

(1) The main question referred to us for consideration is whether the mistake of law on the part of the appellant's counsel amounted to "sufficient cause" within the meaning of section 5 of the Limitation Act for not preferring the appeal against the decision of the Subordinate Judge 1st Class in this court within the prescribed period of limitation and incidentally whether the analogy of section 14 of the said Act is applicable to the determination of the above question inasmuch as the mistake of the counsel consisted in at first filing the appeal in the court of Senior sub-Judge who ultimately returned the memo of appeal to the appellant for presentation. to this court with the consequent loss of the time resulting in the expiry of the period of limitation.

(2) An application u/s 20 of the Arbitration Act was filed by the plaintiff-appellant in the court of Subordinate Judge 1st Class and was registered as a suit for the purpose of court fee which was correctly valued at Rs. 130.00 and a fixed court fee stamp of Rs. 13.00 was affixed on it under Article 18 of Schedule II of the Court Fees Act. For the purpose of jurisdiction also it was valued at Rs. 130.00 though according to rule 6 framed u/s 9 of the Suits Valuation Act, it had to be valued according to the market value of the property in dispute. The plaintiff-appellant had a claim for compensation based on insurance policy against the

respondents-defendants for Rs. 33,400.00 which was purported to be settled between the parties at Rs. 21,850.00. But the plaintiff-appellant contended that Rs. 11,550.00 were still due on the said policy and as this amount was not paid the application for reference of the dispute to arbitration was made u/s 20 of the Arbitration Act. In the written statement the defendants-respondents denied the correctness of the valuation for jurisdiction but did not specifically state that the valuation for jurisdiction should be made at Rs. 11,550.00. For, even if the valuation had been Rs. 11,550.00, the Sub-ordinate Judge 1st Class would have had the jurisdiction to try the application registered as a suit. The significance of the correct valuation for the purpose of jurisdiction lay, however, in section 39 of the Punjab Courts Act according to which the appeals against decrees or orders passed by a Sub-ordinate Judge 1st Class would lie either to the District Judge or to the High Court according as value of the original suit in which the decree or order was passed was Rs. 5000.00 or below or exceeded Rs. 5,000.00. The appeals arising out of suits valued at Rs. 5000.00 or below could be ordered by the High Court to be preferred to a Senior Sub-ordinate Judge deemed to be a District Judge. The Sub-ordinate Judge 1st Class did not frame any issue as to correctness of the valuation of the suit for the purpose of jurisdiction. He dismissed the application registered as a suit on 25-5-1972. The true copy of the judgment of the Sub-ordinate Judge 1st Class shows in its title that the petition under sections 20 and 8 of the Arbitration Act was valued for court fee and jurisdiction at Rs. 130.00. It is against this judgment that the appeal was at first filed before the Senior Sub-ordinate Judge by the plaintiff-appellant. The respondents objected there and pointed out that the appeal lay to the High Court and not to the Senior Sub-ordinate Judge inasmuch as the valuation of the suit for the purpose of jurisdiction before the Sub-ordinate Judge 1st Class should have been Rs. 11,550 and not Rs. 130.00. As the decision of the Sub-ordinate Judge was in a suit which should have been valued correctly at Rs. 11,550 for jurisdiction (though it was in fact incorrectly valued at Rs.130.00), the appeal against the said decision lay to the J-hgli Court. This contention was accepted by the Senior Sub-ordinate Judge who returned the memorandum of appeal to the appellant for being presented to this court. It was so presented by the appellant on the same day. The appellant has made an application u/s 5 of the Limitation Act to the effect that he has sufficient cause for not preferring the appeal to his court within time inasmuch as it had first presented it to the Senior Sub-ordinate Judge. Shri R. S. Oberoi who was the counsel of the appellant in this case in all the courts has himself filed an affidavit explaining the sufficient cause in the following words : -

"THAT the appeal had been filed before the learned Senior Sub-ordinate Judge, on the advice of the deponent, as the deponent had a bonafide impression that since the valuation for purposes of Court Fee and jurisdiction in the trial court was Rs. 130.00, Therefore, the forum for appeal was the court of the Senior Sub Judge and also under the impression that the subject matter of the petition u/s 20 of the arbitration Act was reference of the dispute between the parties to the

arbitrator regardless of the amount involved."

"THAT neither the appellant nor the deponent had been negligent or careless in filing the appeal before the Senior Sub-Judge, nor was it done so with any ulterior motive, but it was on account of the wrong impression and the mistaken advice of the deponent. Since the deponent was firm in his impression about the forum of appeal, the deponent did not consult any law book on the point."

(3) The limitation for preferring the appeal to the High Court expired during the pendency of the appeal in the court of the Senior Sub Judge. It is the time spent by the appellant thereafter in the court of the Senior Sub-ordinate Judge which constitutes the delay in preferring this appeal to the High Court. The appellant seeks u/s 5, the extension of the period of limitation for filing the appeal to that extent.

(4) Let us consider the first part of the question namely, whether the mistaken legal advice of the appellant's counsel in the circumstances of the present case constitutes "sufficient cause" for not preferring the appeal within time to this court within the meaning of section 5 of the Limitation Act. There are two ways of considering a statutory provision like the expression "sufficient cause". One way to find out its abstract meaning according to the rules of interpretation of statutes with the help of dictionary or statutory definitions and the context of the other provisions of the statute, the object of the statute etc. This would be considering a pure question of law. The other way is to consider the particular facts of the case and to draw an inference from them as to whether they are covered or they comply with the statutory expression or whether they amount to "sufficient cause" as in the present case. This is to consider a mixed question of fact and law or such a question of law as consists of an inference from the proved facts of the case. It is necessary to emphasise that the expression "sufficient cause" does not admit of any abstract construction. It is on the other hand essentially an inference to be drawn from the circumstances of each case. sufficient cause may be purely physical consisting of the physical circumstances, or it may be mental such as a misconception or a mistake which accounts for the conduct of the appellant or his counsel resulting in the delay in the filing of the appeal. The expression "sufficient cause" is also used in Rules 9 and 13 of Order IX, Civil Procedure Code. The non-appearance of a party in a civil court may also be due to sufficient cause which may be either physical or mental. The words "sufficient cause" in themselves do not have any particular fixed meaning. A dictionary or statutory definition would not, Therefore, be of any help in construing it. Whether a particular cause is sufficient or not is a matter for judicial determination and Therefore of judicial discretion. Each such decision would depend entirely on the particular facts of the case. It is only if the court is satisfied on the facts of the particular case that there was sufficient cause for the late filing of the appeal that the court would so hold. This is why the Judicial Committee of the Privy Council in AIR 1937 276 (Privy Council) said that :

"MISTAKEN advice given by a legal practitioner may in the circumstances of a

particular case give rise to a sufficient cause within the section though there is certainly no general doctrine which saves parties from the results of wrong advice."

(5) The question Therefore, whether the wrong legal advice resulting in delay in filing the appeal can constitute a sufficient cause u/s 5 of the Limitation Act cannot be answered except in terms of the particular circumstances of the case. The legislature has deliberately used broad general words such as "sufficient cause" which give wide discretion to the courts in doing justice In each case in deciding whether such a sufficient cause is made out in the circumstances of the particular case to be decided.

(6) The circumstances of this case which favor the existence of a sufficient cause may be indicated as follows : (1) The misconception of law existed in the mind of the counsel who has filed an affidavit stating the precise circumstances in which it arose thus enabling the court to decide whether and to what extent the misconception was such as to make out a sufficient cause.

(7) (2) The mistake was made by the counsel initially in wrongly valuing the suit for the purpose of jurisdiction. If the mistake had been corrected in the trial court, the question of counsel persisting in the mistaken course of action would not have arisen. Though the defendants disputed the valuation of the suit for jurisdiction, they did not specifically point out that rule 6 framed u/s 9 of the Suits Valuation Act required the valuation to be Rs. 11,550.00. The defendants-respondents did not press the objection to the jurisdiction. The trial court did not take notice of it and frame an issue and the suit was decided on the assumption that the valuation for jurisdiction was correct.

(8) (3) The plaintiff filed a rejoinder in the trial court maintaining that the valuation of the suit was correct. That remained the final word in the trial court. No issue was framed as to the correctness of the valuation. The plaintiff was Therefore, led to believe that the valuation was correct. There was no reason for the plaintiff to apply its mind again to the matter when filing the appeal.

(9) (4) The judgment against which the appeal was filed itself bore on its title that the valuation of the suit for court fee and jurisdiction both was Rs. 130. It could not be expected that the plaintiff-appellant who bases his right to appeal on this judgment should dispute his own valuation implicitly confirmed by the trial court. In fact the plaintiff had no right to appeal on a fact which was not decided by the trial court against him. The only thing which the plaintiff could do was to suo moto apply for the amendment of the plaint and the judgment u/s 153 Civil Procedure Code. So much introspection and thoughtfulness is not found in ordinary human nature.

(10) (5) If the application u/s 20 of the Arbitration Act was merely for the purpose of getting the dispute referred to arbitration this in itself was not capable of valuation. It was not like a suit praying for a money decree. It is only by a fiction that section 20 of the Arbitration Act treat the application as a suit. This is

also why only a fixed court fee of Rs. 13.00 is payable on it. Ordinarily the valuation for court fee and jurisdiction go together e.g. section 8 of the Suits Valuation Act. They may, however, be different but one would require to scrutinise the rule framed u/s 9 of the Suits Valuation Act to find this out. The question is whether the impression of the plaintiff's counsel that in an application u/s 20 of the Arbitration Act the valuation for court fee being nominal, the valuation for jurisdiction would also be nominal, i.e. the same was plausible particularly when the plausibility of the impression was confirmed by its acceptance by the trial court.

(11) It is at this stage that the learned counsel for the respondents argued that the impression of the plaintiff's counsel was not bonafide. He referred to the definition of "good faith" in section 2(h) of the Limitation Act which says that "nothing shall be deemed to be done in good faith which is not done with due care and attention". He points out that the plaintiff's counsel admitted in his affidavit that he did not consult any law book to disabuse himself of this wrong impression. He argued that the plaintiff's counsel did not act with due care and attention and his mistake was not, Therefore, bonafide. When it was pointed out to him that the expression "good faith" is not used in section 5 at all, he argued that it was used in section 14 of the Act. He conceded that section 14 did not apply in terms to the appeal but contended that its principle would apply to the appeal and Therefore the test of good faith should be applied to the conduct of the plaintiff's counsel. This leads us to consider the next aspect as to whether the analogy of section 14 is helpful in testing the existence of "sufficient cause" in a case like the present one in which the delay in presenting the appeal has occurred by the time spent by the plaintiff in a court without jurisdiction.

(12) Before entering on this aspect, of the question, we would respectfully sound a note of caution. The golden rule of interpretation of statutes is to understand its words in their plain meaning. Such meaning is elucidated by reference to English dictionaries, if necessary. The object of defining a word or an expression in a statute is either to define more closely the meaning of the word or an expression which would otherwise be too broad or general or it may be to give an artificial meaning to the word or the expression specially for the purpose of the statute concerned. The ordinary meaning of the expression "good faith" is an honest and sincere belief.

"WHAT does "good faith" mean ? What is meant by those two English words which are the exact equivalent in every sense of the expression which is perhaps more commonly used, though not more correctly or properly, bona fides ? I think that the best way of defining the expression, so far as it is necessary or safe to define it, is by saying that it is the absence of bad faith or mala fides." *Mogridge v. Clapp*, (1892) 3 Ch. 382, C. A. per Kekewich, J., at p. 391."

As was observed in *Baume and Co. Ltd. v. A. H. Moore, Ltd.* (1958) 2 All E R 113 .

"THE truth is that a man is either honest or dishonest in his motives; there is no

such thing, so far as we are aware, as constructive dishonesty."

(13) In Webster's Third New International Dictionary also the expression "bona fide" is defined to mean "without fraud or deceit", "sincere" and "genuine". In the Oxford English dictionary also the expression "bona fide" is defined as "with sincerity ; genuinely". It is to be noted that none of these authoritative dictionaries give the meaning of "good faith" in the way in which the expression is defined in section 2(h) of the Limitation Act. The definition in section 2(h) does not, Therefore, give the commonly understood meaning of "good faith." Its application is, Therefore, to be limited only to the interpretation of that expression wherever it is used in the Limitation Act. Since the expression is not used in Section 5, the definition in section 2(h) cannot be imported into section 5 for the understanding of the meaning of "sufficient cause". The real question is Therefore, whether the misconception of the plaintiff's counsel was honest, sincere and genuine. The test of its honesty and genuineness is that there was absolutely no benefit to the plaintiff in valuing the suit at Rs. 130.00 instead of Rs. 11,550.00 for jurisdiction. The amount of court fee would have been the same. The test of its sincerity was that the plaintiff persisted in the impression not only in the trial court but also in filing the appeal in the court of Senior Subordinate Judge. He also acquiesced in acknowledging his mistake when it was pointed out to him by the Senior Subordinate Judge and he made a candid confession of it in his affidavit. Another aspect is whether the impression of law entertained by the plaintiff's counsel was so unreasonable as to be unbelievable. In *Banwarilal and Sons Pvt. Ltd. Vs. Union of India and Others*, , a Division Bench of this court had to consider whether the affidavit filed by the party of the alleged wrong legal advice given to him by his counsel Shri R. M. Lal should be believed. The court found that Shri Lal was a very knowledgeable counsel. Shri Lal did not appear before the court and did not state that he had given any wrong legal advice nor did he file any affidavit about it. The law was so well established that a counsel of the standing of Shri Lal, could not have been mistaken about it. The court, Therefore, refused to believe that Shri Lal had advised his client wrongly as had been alleged by the client. The bar is a learned profession. A certain minimum knowledge of law is not only expected of the members of the bar but the lack of it would not even be believable if alleged in the courts. (*Mrs. J. H. Nelson v. S. Thakur Singh* (1967) 69 P. L. R. 64) The minimum standard expected of a member of the bar would also vary according to the tradition, the place and the nature of the particular bar or sections of the bar. The legal profession in England has maintained a high standard. The trend of decisions in English cases is Therefore to expect a high standard of knowledge of law from the bar and to display a certain reluctance to extend limitation on the ground of mistake of law committed by counsel as for instance in *Helsby*, 1894 2 Q. B. 742. This decision was sought to be applied in this country but in *Shib Dayal v. Jagannath*, 44 All. 636 F. B. it was held that:

"ALTHOUGH legal education has progressed in this country and the courts are right in demanding increasing competence in legal practitioners, still having

regard to the disadvantages of practitioners in places remote from law libraries, and to the fact that there is in the mofussil some want of knowledge of the procedure of the High Court, the principle of English decisions should not be strictly applied in this country.

(14) The expression "sufficient cause" is applicable to such a wide variety of circumstances that not only good faith in the sense of an honest and sincere belief but also due care and attention would be required of the applicant in certain situations. It may be said, Therefore, that while due care and attention are not a sine qua non of "sufficient cause" u/s 5 in every case, even due care and attention may be required of an applicant in certain factual situations though in many others they may not be required. Even when due care and attention are required, the reason is not that the definition of section 2(h) applies to section 5 but that anything which is regarded as natural and convincing by the court may amount to sufficient cause. This may be illustrated by the following Supreme Court decisions :

(15) (1) In *Dinabandhu Sahu Vs. Jadumoni Mangaraj and Others*, the election petition was delivered at the post office for being sent by registered post one day before the period of limitation but it reached its destination one day after the expiry of the period of limitation. At page 146 the Supreme Court observed as follows :

"EVEN if the matter had to be judged u/s 5 of the Limitation Act, it would have been a proper exercise of the power under that section to have excused the delay."

(16) (2) In *Shakuntala Devi Jain Vs. Kuntal Kumari and Others*, , the nephew of the appellant had obtained the certified copy but misplaced it. The appellant thereupon made another application for a fresh copy and this naturally caused delay in filing the appeal. It could have been argued that the appellant was negligent in allowing the first copy to be misplaced and applying for a fresh copy but the Supreme Court observed at the end of paragraph 10 of the judgment as follows :

"IT is not a case where it is possible to impute to the appellant want of bona fides or such inaction or negligence as would deprive her of the protection of section 5 of the Limitation Act."

(17) (3) Even more to .the point are instances in which delay was caused in filing the appeal in proper court because the appeal was first pursued wrongly in a court without jurisdiction. In *Mata Din Vs. A. Narayanan*, , the suit had been actually valued after a successful objection by the defendant at more than Rs. 5.000.00. The appeal against the decision of the Sub-Judge had Therefore to be filed in the High Court. Nevertheless it was filed before the District Judge and due to loss of time there, the appeal came to be filed in the High Court after the expiry of the period of limitation. The filing of the appeal was delayed by nearly one year. The High Court held that there was no ground for extending time u/s 5

of the Limitation Act inasmuch as an Advocate of 34 years" standing could not possibly make a mistake in view of the clear provisions of section 39 of the Punjab Courts Act. Nevertheless, the Supreme Court held that the mistake of the counsel was bona fide and time should have been extended u/s 5 of the Limitation Act. The court observed towards the end of paragraph 7 as follows :

"WE do not find anything in the case to show that this error was tainted by any mala fide motive on the part of the counsel for the litigant."

In paragraph 6 the court laid down the test of judging "sufficient cause" as follows :

"THE law is settled that mistake of counsel may in certain circumstances be taken into account in condoning delay although there is no general proposition that mistake of counsel by itself is always a sufficient ground. It is always a question whether the mistake was bona fide or was merely a device to cover an ulterior purpose such as laches on the part of the litigant or an attempt to save limitation in an underhand way."

(18) In *The State of West Bengal Vs. The Administrator, Howrah Municipality and Others*, , the State was not properly advised regarding the remedy to be adopted to challenge the judgment in the land acquisition reference cases. But the Supreme Court approved the observations of the Judicial Committee of the Privy Council in *Kunwar Rajendra Bahadur Singh v. Rai Rajeshwar Ball and others*, (cited above) and held that the wrong advice given by the lawyer was also a circumstance to be taken into account in considering whether the appellant had shown a sufficient cause and ultimately held that there was sufficient cause justifying the extension of time u/s 5 of the Limitation Act in filing the appeals. In *The Punjabi University, etc. Vs. Acharya Swami Ganesh and Another*, , there was a bona fide mistake of the counsel in computing the period of limitation. Again the Supreme Court held that a bona fide mistake of the counsel in making the calculation was sufficient cause u/s 5 of the Limitation Act. In *Balbir Singh v. Bogh Singh* (1974) 1 S.C. W.R. 337, the plaintiff appellant had valued the suit for the purpose of jurisdiction at Rs. 21,000.00. Clearly Therefore u/s 39 of the Punjab Courts Act the appeal against the order of the trial court lay to the High Court and not the court of the District Judge. Even then the plaintiff appellant first filed the appeal before the Addl. District Judge who also did not take note of this wrong institution before him. The Supreme Court expressed surprise that the lack of jurisdiction should have escaped the notice of the office of the Addl. District Judge as also of that court. In these circumstances it was held that the plaintiff-appellant and his legal adviser acted bona fide in prosecuting the first appeal before the Additional District Judge. For such a bona fide mistake the plaintiff was not allowed to suffer and the delay in refiling the first appeal in the High Court was held as deserving condonation u/s 5 of the Limitation Act.

(19) The requirement of the general bona fides in the sense of honest and sincere belief in the misconception of law is of course an essential ingredient of a

sufficient cause u/s 5 when the mistaken advice is the cause of the delay. In certain cases due care and attention would also be required of the counsel. But this would be a requirement of "sufficient cause" in certain circumstances only. This requirement is not the result of the applicability of section 2(h) to the construction of section 5. With utmost respect, this distinction does not seem to have been borne in mind in certain dicta in a series of decisions of the Punjab High Court such as the following :

(20) The analogy of section 14 of the Limitation Act is useful in determining "sufficient cause" u/s 5 only when the delay is caused by the applicant proceeding in a court which ultimately was found unable to entertain it. When the facts are thus covered fully by section 5, the question whether there is a sufficient cause or not would naturally be decided after considering whether the requirements of section 14 would have been satisfied by the facts, had section 14 applied in terms. If the answer is in the affirmative, a strong case could be made out in favor of the existence of "sufficient cause" u/s 5 also. On the facts of the case before us even requirements of section 14 would have been satisfied had they been applicable in terms. This is an additional reason Therefore to hold in favor of the existence of sufficient cause for the delay in filing the appeal within the meaning of section 5. It is not necessary for us to consider in this case whether a sufficient cause could be shown to exist even when the requirements of section 14 are not satisfied when the delay is caused by prosecution of another proceeding in a court which ultimately was found unable to entertain it. To sum up the relationship between section 14 and section 5 it may be said that the facts which satisfy the requirements of section 14 would ordinarily satisfy the requirements of section 5 also but the requirements of section 5 may be satisfied by many other factual situations which do not satisfy the test of "good faith" as defined in section 2(h) of the Limitation Act but which nevertheless show that the misconception of law by the counsel was bona fide in the sense that it was honest, sincere and genuine, that is to say, it was a real and excusable misconception and was not a mere device to circumvent the law.

(21) In *Municipal Corporation of Delhi v. Bharat Oxygen Gas Company*, I. L. R. 1971 I Delhi 385, the suit for injunction was valued for court fee at Rs. 130.00 only but was wrongly valued for jurisdiction at Rs. 20,000.00 even though u/s 8 of the Suits Valuation Act the valuation for jurisdiction should also have been Rs. 130.00. Had the valuation for jurisdiction been Rs. 130.00 the appeal would have been lodged in the court of Senior Subordinate Judge. The appeal was actually filed in that court inasmuch as no objection was taken to the jurisdictional value of the suit in the trial court. Objection being taken to the competence of the Senior Subordinate Judge to entertain the appeal it had to be represented to the High Court after the expiry of the period of limitation. It was held that the counsel for the appellant could have easily thought on the basis of section 8 of the Suits Valuation Act that the value for jurisdiction should have been Rs. 130.00 only and Therefore appeal could lie to the Senior Subordinate Judge, even though actually the value for jurisdiction had been taken at Rs. 20,000.00.

In these circumstances, the decision of the Supreme Court in *Mata Din v. A. Narayanan*, (referred to above) was followed and the delay in filing the appeal was held to be due to sufficient cause within the meaning of section 5 of the Limitation Act. Even though Shri Joshi counsel for the appellant had not filed an affidavit, he had recorded a note on the file of the appeal and he also argued before the First Appellate Court that the appeal had been properly filed in that court. From these circumstances, the Division Bench of this court was persuaded to hold the view that Shri Joshi believed that in view of the value of the appeal for purposes of court fee, the appeal had been properly filed in the court of Senior Subordinate Judge and not in the High Court.

(22) To sum up, inasmuch as the expression "sufficient cause" is not an abstract question of law but has to be an inference from the facts of a particular case, it is not easy to conceive of a genuine conflict of decisions as to the existence of sufficient cause u/s 5. In *Banwarilal's* case (referred to above) the affidavit of the client that his counsel Shri R. M. Lal gave him wrong advice was not believed and Therefore, it was held that sufficient cause u/s 5 did not exist. On the other hand, in *Delhi Municipal Corporation's* case (cited above), the court believed that the counsel for the appellant was in fact under a misconception of law. As the factual situations in the two cases were different, the decisions were bound to be different. The difference arises not because the two division benches viewed the meaning of "sufficient cause" differently, but purely because the circumstances of the two cases were different.

(23) Applying section 5 to the facts and circumstances of the present case in the light of the case law discussed above, we are of the view that the appellant's counsel was under a bona fide misconception of law which was entirely understandable in the circumstances of the case, and, Therefore, the filing of the appeal in the first instance in the court of the Senior Subordinate Judge and loss of time caused by the pendency of the appeal there was a sufficient cause, for not preferring the appeal in this court within the period of limitation. The C. M. 647 of 1973 u/s 5 of the Limitation Act Therefore, succeeds and after condoning the delay it is held that the presentation of the appeal to this court is not barred by limitation. The appeal will now go back to the referring Bench to be dealt with in the light of our decision. We make no order as to the costs of the parties incurred in this reference.