
(2011) 09 MP CK 0080
In the Madhya Pradesh High Court
Case No : Second Appeal No. 246 of 2002

Premchand Soni since deceased LR's. Janki Bai and Others APPELLANT
Vs
Harish Chand RESPONDENT

Date of Decision : 07-09-2011

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 100
Limitation Act, 1963 — Section 5
Madhya Pradesh/Chhattisgarh Accommodation Control Act, 1961 — Section 12(1)

Citation : (2011) 5 MPHT 154 : (2012) 1 MPLJ 65 : (2012) 1 RCR(Rent) 144

Hon'ble Judges : A.K.Shrivastava, J

Bench : Single Bench

Final Decision : Allowed

Judgement

A.K. Shrivastava, J.

The unsuccessful defendant, who has lost from both the learned Courts below, by taking aid u/s 100, CPC is trying to take shelter of this Court.

No exhaustive statements of fact are required to be narrated for the purpose of disposal of this appeal. Suffice it to say that a suit for eviction on the ground envisaged u/s 12(1) of the M. P. Accommodation Control Act, 1961 (for short "the Act") has been filed by the plaintiff-respondent which has been decreed by learned trial Court. However, the appeal was barred by time and therefore, learned First Appellate Court dismissed the same as not maintainable, since no application u/s 5 of the Indian Limitation Act, 1963 (for brevity "the Limitation Act") was filed along with memorandum of appeal by placing reliance on the decision of this Court State of M. P. vs. Pradeep Kumar, 1999 (1) M.P.W.N. 41.

In this manner, this second appeal has been filed by the defendant.

This Court admitted the second appeal on 3-7-2002 on the following substantial question of law :

Whether lower Appellate Court erred in deciding the merits of the case while in para-11 of its judgment lower Appellate Court found that the appeal is barred by time?

I have heard learned counsel for the parties on the substantial question of law. Having heard them, I am of the view that this appeal deserves to be allowed and the case is required to be sent back to the learned First Appellate Court. Regarding Substantial Question of Law :

On bare perusal of the impugned judgment passed by learned First Appellate Court this Court finds that on the basis of a decision of this Court Pradeep Kumar (supra) since the appeal of the tenant-defendant was barred by time and memorandum of appeal was not accompanied by any application to condone the delay u/s 5 of the Limitation Act, the appeal was dismissed as not maintainable. Indeed, said decision of this Court has been reversed by the Supreme Court in State of M.P. and Another Vs. Pradeep Kumar and Another, wherein the Supreme Court has held that if an appeal is barred by time, the Court should either return the memorandum of appeal to the appellant to submit it along with the application u/s 5 of the Limitation Act or should provide a chance to file application to condone the delay. Since neither the learned First Appellate Court returned the appeal to the appellant nor gave any chance to the appellant to file necessary application to condone the delay in filing the appeal, I am of the view that on the basis of decision of Supreme Court State of M. P. vs. Pradeep Kumar (supra), the impugned judgment cannot be said to be in accordance with law.

The substantial question of law is thus answered that learned First Appellate Court erred in substantial error of law in dismissing the appeal of appellants as barred by time holding it to be not maintainable.

Resultantly, this appeal succeeds and is hereby allowed. The impugned judgment and decree passed by learned First Appellate Court is hereby set aside and the case is sent back to learned First Appellate Court. The parties are hereby directed to appear on 10-10-2011 before that Court and no notice shall be issued to either of the parties for this date. In case, the appellants do not file any application u/s 5 of the Limitation Act to condone the delay in filing the appeal on that date (10-10-2011), the Appellate Court shall return the memorandum of appeal to appellants so as to enable them to file the appeal along with the application u/s 5 of the Limitation Act. However, looking to the nature of the case, this Court hopes and trust that the learned First Appellate Court shall decide the appeal on or before 30-11-2011.

The Registry is hereby directed to send the record of the two Courts below to learned First Appellate Court posthaste so as to reach that Court much prior to 10th October, 2011.

The appeal is accordingly allowed with no order as to costs.

Certified copy as per rules.