
(2006) 03 SHI CK 0006
In the High Court Of Himachal Pradesh
Case No : C.M.P.M.O. No. 188 of 2004

Roshan Lal and Another

APPELLANT

Vs

Rajinder Kumar and Others

RESPONDENT

Date of Decision : 31-03-2006

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 43 Rule 1, Order 9 Rule 4
Limitation Act, 1963 — Section 5

Citation : (2007) 1 CivCC 296 : (2007) 5 RCR(Civil) 402 : (2006) 2 ShimLC 235

Hon'ble Judges : V.K. Gupta, C.J

Bench : Single Bench

Advocate : Sandeep Sharma, for the Appellant; Bhupender Gupta and A.P.S. Jaswal, for the Respondent

Judgement

V.K. Gupta, C.J.—After hearing the learned Counsel for the parties and on perusal of the impugned judgment dated 19th May, 2004, I find that the learned Court below by correct appreciation of the material on record has rightly passed an order allowing the respondents' application u/s 5 of the Limitation Act by condoning the delay of just a few days in filing the appeal in terms of Order 43 Rule 1 of the CPC against the order dated 17th September, 2002 passed by the then Sub Judge 1st Class, Bilaspur rejecting the respondents application filed under Order 9 Rule 4 of the CPC for restoration of the suit dismissed in default on 12th October, 1998.

2. The suit filed by the respondents was dismissed on 12th October, 1998. The application for restoration was filed within two weeks, on 28th October, 1998. It is a pity that the justice dispensation system under which we all are working allowed this application to be protracted for as long a period as four years in as much as such a simple application for restoration of a suit was disposed of exactly four years later, on 17th September, 2002. The learned trial Court adopted a very pedantic approach in dealing with the application for restoration. Otherwise a simple restoration application for restoring a suit dismissed for

default of appearance of the plaintiffs could have been, and actually ought to have been disposed of in a very short time, say a couple of months.

3. Very often, in a number of cases, I have noticed a fanciful tendency on the part of the trial Judges to leisurely and pleasurely deal with interlocutory applications filed in pending suits. It is a great travesty of justice and a very grave misfortune of the litigants that the interlocutory applications in pending suits take such a long time for disposal whereas ordinarily and in the normal course these should be disposed of within a very very short time. In normal course and ordinarily in usual circumstances it should not take more a couple of weeks or a couple of months for disposing of these applications. Actually if the restoration applications are filed within the limitation period, or if some other interlocutory applications are filed for the grant of some innocuous or small reliefs, the trial Courts should ignore frivolous and fallacious defences, objections or contests to these applications and should ensure to decide all such applications with utmost expedition. The trial Courts perhaps do not realize that keeping such applications pending for long time, as in the present case for as long as four years, defeats the ends of justice because the disposal of suits gets delayed by that much period.

4. While the trial Court in this case unnecessarily took four years in disposing of a very simple application for restoration of a suit despite the fact that the application was filed within limitation period, the appeal Court on its part did no better as it took exactly one and a half years in disposing of a simpler application for condonation of delay in filing the aforesaid appeal under Order 43 Rule 1 of the Code of Civil Procedure. Actually, I do not subscribe to the view that in such a simple application for condonation of delay in filing such a simple appeal against the rejection of a restoration application, the parties should be burdened with leading of evidence by production of witnesses. The approach of the appeal Courts in such matters should be to advance the cause of justice and such a course can best be achieved by dispensing with the leading of evidence by production of witnesses. If evidence indeed is found to be inevitable in certain types of cases, the Courts should adopt the summary procedure by directing the parties to file the affidavits and counter affidavits of the respective parties and their witnesses. Any how the all embracing approach should be to advance the cause of justice and that object: can best be achieved by shortening the disposal process of such simple, innocuous and petty matters. It is indeed unfortunate that such a simple appeal ought to have taken one and a half years for disposal.

5. What emerges, therefore, is that only because of the delay having occurred at the hands of the trial Court and the appeal Court and for no fault of the parties, a suit which was dismissed in October, 1998 has not so far been restored despite the lapse of more than five and half years since then and that too in a case where the restoration application was filed within the limitation period of 30 days from the date the suit was dismissed.

6. I have no doubt in my mind that all the Courts in Himachal Pradesh shall take

note of the aforesaid observations made in the spirit in which I have recounted these observations for ensuring that in future real justice is done between the parties and neither any party is allowed to thwart, frustrate or defeat the justice delivery system by adopting the tactics which cause delay in the disposal of the suits or applications nor would the Courts themselves be responsible for adopting such procedure as would defeat the very purpose for which the edifice of justice delivery system is built. The Courts in future must be very careful in ensuring that such types of matters are dealt with and disposed of very very expeditiously. I must hasten to add that in future if any dereliction on this account is noticed by this Court, or brought to the notice of this Court or in future this Court ever finds that these directions have been ignored by the Courts in Himachal Pradesh, this Court shall not hesitate In coming down heavily on the defaulting officers presiding over such Courts.

7. Based on the aforesaid observations, this petition is dismissed with costs assessed at Rs. 500/- to be paid by the petitioners/defendants to plaintiff/respondent No. 1.

8. I was tempted to deal with and dispose of myself the restoration application but keeping in view the purity of the system and my cherished desire not to impinge upon or overreach the well defined jurisdiction of the learned appeal Court, I am sending back this matter to the learned District Judge, Bilaspur with directions to him to dispose of the pending appeal within four weeks from the date of communication of this order to him by the Registry of this Court.

9. The Registry of this Court is directed to circulate copies of this order to all the Courts in Himachal Pradesh for their information as well as necessary compliance in letter and spirit.

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10. In view of the dismissal of the main petition, this application is dismissed and the interim order dated 1st July, 2004 shall stand vacated.