
(2017) 04 RAJ CK 0235
In the Rajasthan High Court
Case No : 140 of 2016

SHANTI & Ors.

APPELLANT

Vs

Jagdish & Ors.

RESPONDENT

Date of Decision : 24-04-2017

Acts Referred:

[Code of Civil Procedure, 1908](#), [Section 10](#)
- Stay of suit
[Limitation Act, 1908](#), [Section 5](#)

Citation : (2017) 04 RAJ CK 0235

Hon'ble Judges : Sangeet Lodha

Bench : SINGLE BENCH

Advocate : Kailash Trivedi

Judgement

1. This revision petition is directed against the order dated 21.7.16 passed by the Additional District Judge, Jodhpur District, whereby an application preferred by the petitioners under Section 5 of Limitation Act, seeking condonation of delay in filing the appeal, stands rejected and consequently, the appeal stands dismissed as barred by limitation.

2. The relevant facts are that the respondents filed a suit for permanent injunction against the petitioners in the court of Civil Judge (JD), Jodhpur District Jodhpur. The written statement filed on behalf of the petitioners/defendants belatedly was objected to be taken on record by the respondents/plaintiffs. The objection of the respondents/plaintiffs was sustained vide order dated 15.9.04 passed by the trial court and accordingly, the written statement was refused to be taken on record. The order passed by the trial court as aforesaid was not further challenged by the petitioners and the same has attained finality. The matter was posted for plaintiff's evidence ex-parte and ultimately, the suit was decreed vide judgment and decree dated 25.7.09. Aggrieved thereby, the petitioners/defendants filed an appeal before the District Judge, Jodhpur District, which was later transferred for hearing and disposal to the Additional District

Judge, Jodhpur District. The appeal filed after a delay of about two and half years was accompanied by an application under Section 5 of Limitation Act for condonation of delay. After due consideration, the application under Section 5 of Limitation Act preferred by the petitioners stood dismissed by the Appellate Court and consequently, the appeal has been dismissed as barred by limitation. Hence, this revision petition.

3. Learned counsel appearing for the petitioners contended that the petitioners were never informed by the counsel appearing on their behalf regarding the decision of the suit and the petitioners came to know about the suit being decreed only on 26.6.12 and thereafter, immediately the appeal was filed and thus, on the facts and in the circumstances of the case, the First Appellate Court has seriously erred in rejecting the application preferred by the petitioners for condonation of delay in filing the appeal. Learned counsel submitted that the litigant cannot be made to suffer on account of fault on the part of the counsel appearing on his behalf. In support of the contention, learned counsel has relied upon a Bench decision of this court in the matter of "Rishab Bhawan Nirman Sahakari Samiti Ltd.(Shri) vs. State of Rajasthan & Ors.", 2011(2) RRT 833.

4. I have considered the submissions of the learned counsel and perused the material on record.

5. Indisputably, in the instant case, the written statement filed on behalf of the petitioners/defendants was refused to be taken on record by the trial court vide order dated 15.9.04. The legality of the said order was never questioned by the petitioners/defendants by taking the appropriate proceedings and the same attained finality. The petitioners while participating in further proceedings of the suit, filed an application under Section 10 CPC, which was rejected by the court below vide order dated 8.2.07. Thereafter, on 10.7.08, on account of non appearance on behalf of the petitioners/defendants, the matter was proceeded ex parte against them. No efforts appear to have been made on behalf of the petitioners for setting aside the proceedings ex parte either. Ultimately, the suit was decreed by the trial court vide judgment and decree dated 25.7.09.

6. Admittedly, the stand of the petitioners/defendants in the application under Section 5 of Limitation Act, was that the counsel appearing on their behalf did not inform them about the decision of the suit and thereafter, when they inquired about the matter by engaging yet another counsel, on 22.6.12 they came to know about the suit being decreed vide judgment and decree dated 25.7.09.

7. It is true that the law of procedure is hand maiden of justice and when the procedural technicalities and the substantial justice are pitted against each other, the later has to be preferred. But then, the matter always cannot be looked from one angle so as to condone the lapses on the part of erring litigant ignoring gross negligence on his part in dealing with the proceedings before the court. The petitioners cannot be permitted to seek condonation of delay attributing negligence on the part of the counsel all the time. A litigant should be vigilant

enough and should keep himself informed about the proceedings pending before the Court. It is to be noticed that in the first instance, the written statement filed on behalf of the petitioners belatedly was refused to be taken on record by the trial court. Thereafter, on account of non appearance on their behalf, the matter was proceeded ex parte against the petitioners, however, no steps were taken by the petitioners for setting aside the proceedings ex parte. Thus, it is apparent that the petitioners were not serious in pursuing the litigation pending before the trial court for all these years and never attempted to find out the progress of the case. Thus, on the facts and in the circumstances of the case, in the considered opinion of this court, the petitioners have not been able to make out the sufficient cause so as to condone the inordinate delay of two and half years in filing the appeal.

8. For the aforementioned reasons, in the considered opinion of this court, the First Appellate Court has committed no illegality, irregularity or jurisdictional error in rejecting the application preferred by the petitioners under Section 5 of Limitation Act and consequently, in rejecting the appeal as barred by limitation.

9. The revision petition therefore fails, it is hereby dismissed in limine.