
(2014) 01 AHC CK 0135
In the Allahabad High Court
Case No : C.M.W.P. No. 23319 of 2001

Smt. Arti Devi

APPELLANT

Vs

District Judge, Siddharthnagar and Others

RESPONDENT

Date of Decision : 22-01-2014

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 21 Rule 2, Order 21 Rule 21
Limitation Act, 1963 — Section 10, 11, 12, 13, 14

Citation : (2014) 3 ADJ 639 : (2014) 103 ALR 75 : (2014) 2 AWC 1754 : (2014) 122 RD 777

Hon'ble Judges : Sudhir Agarwal, J

Bench : Single Bench

Advocate : Chandeshwar Prasad and Kushal Kant, Advocate for the Appellant;
Ghanshyam Dubey and Jitendra Kumar Yadav, Advocate for the Respondent

Final Decision : Dismissed

Judgement

Sudhir Agarwal, J.—Heard Sri Jitendra Kumar Yadav, Advocate holding brief on behalf of Sri Chandeshwar Prasad, learned Counsel for the petitioner and perused the record. The writ petition is directed against the order dated 3.3.2001 passed by District Judge, Siddharth Nagar allowing Revision No. 29 of 2001.

2. It appears that for cancellation of sale-deed dated 22.1.1991 Original Suit No. 264 of 1997 was filed alongwith a delay condonation application, whereupon the Trial Court passed order condoning delay in filing suit. Subsequently, when an application was filed for recall of that order, that was also rejected by Trial Court vide order dated 8.2.2001 and thereagainst a revision was preferred by defendant, which has been allowed by District Judge, Siddharth Nagar vide impugned order dated 3.3.2001.

3. The Revisional Court has observed that there is no provision in the Limitation Act for condoning delay in filing suit. Learned Counsel for the petitioner could not show that section 5 of Limitation Act, 1963 (hereinafter referred to as the "Act, 1963") would apply to seek condonation of delay in filing a suit itself. Once the

suit itself is barred by time, the Court is retrained to entertain the same by virtue of section 3.

4. Section 5 applies to the stages subsequent to institution of a valid suit and those proceedings which are construed as continuation of suit and not for seeking condonation of delay in filing a time barred suit. The applicability of section 5 has been excluded specifically to applications which fall under Order XXI, C.P.C. It shows that even when the suit proceedings have come to an end, in execution proceedings also section 5 shall not be applicable. A suit if otherwise is barred by time and is not saved by other provisions of sections 4 and 6 to 24 of Act, 1963 then it shall not be entertainable by the Court and has to be dismissed in view of the obligation created vide section 3 of Act, 1963. Section 5 specifically says that it is applicable to an appeal or in application but not to a suit. The suit instituted by filing a plaint and a plaint, in my view, would not be covered by the term "application".

5. This Court in Smt. Jagwanta Vs. Smt. Nirmala and Others, has specifically said that section 5 does not apply to suits or to applications under Order XXI, Rule 2, C.P.C. A similar view has also been taken in Badri Narayan Sharma Vs. Panchayat Samiti, Dhariawad, . The Karnataka High Court in Mahboob Pasha Vs. Syed Zaheeruddin and Others, has said that section 5 does not apply to original cause of action so as to extend the period of limitation by concession made by parties.

6. Learned Counsel for the petitioner also could not place anything before this Court so as to pursue to take an otherwise view in the matter. In my view, the District Judge has rightly set at naught the Trial Court's order by allowing revision since the Trial Court has committed a serious jurisdictional error by entertaining a time barred suit and making it within time by allowing application u/s 5 of Act, 1963. The Revisional Court's order, therefore, warrants no interference. Dismissed. Interim order, if any, stands vacated.