

(1995) 01 MP CK 0048
In the Madhya Pradesh High Court
Case No : Second Appeal No. 111 of 1992

Smt. Madhuribai		APPELLANT
	Vs	
Grasim Industries Ltd., Nagda		RESPONDENT

Date of Decision : 25-01-1995

Acts Referred:

Limitation Act, 1963 — Section 5

Citation : AIR 1995 MP 160 : (1995) MPLJ 423

Hon'ble Judges : J.G. Chitre, J

Bench : Single Bench

Advocate : B.L. Bhartiya, for the Appellant; Nair, for the Respondent

Final Decision : Dismissed

Judgement

J.G. Chitre, J.

The appellant, Smt. Madhuribai is taking exception to the order passed by the District Judge. Ujjain in the matter of Civil Appeal No. 3A of 1992 by which he did not condone the delay and dismissed the appeal of the appellant.

By filing appeal in the District Court Ujjain, appellant Madhuribai challenged the decree and order passed by Civil Judge Class II, Khachrod in the matter of Civil Suit No. 203-A of 1988. The said decree was passed in favour of present respondent directing eviction of the present appellant from the suit premises.

In the District Court Ujjain an application was filed by present appellant on 11-2-1992 wherein she prayed for condonation of delay in filing the appeal which was for the period between 2-1-1992 to 10-2-1992. The said application was supported by the affidavit of appellant Madhuribai and two medical certificates given by Dr. D.M. Sisodiya bearing dates 10-1-1992 and 5-2-1992. In certificate dated 10-1-1992 Dr. Sisodiya had certified that appellant Madhuribai was suffering from typhoid and fever and was under his medical treatment. By the said certificate he expressed his opinion that Madhuribai should be allowed 14 days leave with effect from 31-12-1991 to 14-1-1992. By certificate dated

5-2-1992 Dr. Sisodiya certified that appellant Madhuribai was suffering from anaemia and colic and was unable to perform her duties and was requiring complete rest and was, according to his opinion, entitled to get 16 days leave w.e.f. 29-1-1992 to 13-2-1992. Said prayer for condonation of delay was objected to by the present respondent. The learned first appellate Court by order dated 19-2-1992 dismissed, the prayer of the appellant for condonation of delay and that is the subject-matter of challenge in this appeal.

3A. The present appeal has been admitted on two substantial questions of law:--

(1) Whether the first appellate Court erred in dismissing the appeal as time barred without holding an inquiry and giving opportunity to the appellant to lead evidence in support of her application u/s 5 of the Limitation Act?

(2) Whether an inference of sufficient cause for delay can be drawn in favour of the appellant?

Learned counsel for the appellant Shri Bhartiya submitted that the appellant happens to be a lady and as averred by her in written statement, was mentally disturbed. He submitted that when two medical certificates were furnished by the appellant explaining the delay, the learned first appellate Court should have condoned the delay but that has not been done and, therefore, the learned first appellate Court committed an error of law.

Shri Nair, learned counsel appearing for the respondent submitted that in the application, the present appellant has given different reasons for condonation of delay. He pointed out that there is no mention in the said application that she was mentally disturbed and, therefore, was unable to file appeal within time.

It is to be noted that in the said application present appellant did not mention that she was mentally disturbed and that was also a cause for delay in filing the appeal in the first appellate Court. In the said application dated 11-2-1992 she had mentioned only this much that from 2-12-1991 she was suffering from typhoid and because of that she was unable to contact her Advocate. She mentioned in the said application that on 10-2-1992 she was able to contact her Advocate and learnt that the time for filing the appeal was of one month. It is pertinent to mention that record shows that appellant has two sons and three daughters who are major. A grievance has also been made by the appellant that those two sons and three daughters who are major were not impleaded as necessary parties in the suit. Therefore when she was suffering from typhoid or anaemia as averred by her, she could have sent those children to the counsel for the purpose of filing appeal with a Vakalatnama duly signed and certified copy of the judgment and decree of the trial Court but no such steps have been taken by the appellant.

Learned counsel for the appellant submitted that the appellant has explained delay in satisfactory way and, therefore, it was duty of the first appellate Court to condone the said delay, Shri Nair, learned counsel for respondent submitted

that delay has not been explained by the appellant satisfactorily considering the relevant dates. I find substance in the submission made on behalf of the respondent by its counsel. The date (of the judgment of trial Court is 19-11-1991) and on 2-12-1991 the appellant has received certified copies of judgment and decree. The appeal in the first appellate Court should have been filed on or before 2-1-1992. The medical certificates filed by the appellant show that she was indisposed from 31-12-1991 to 14-1-1992 and from 29-1-1992 to 13-2-1992. It is pertinent to note here that there is no explanation for the delay between 15-1-1992 to 28-1-1992 which is of 13 days. It is also pertinent to note that on 10-2-1992 the appellant was present in the Court and has sworn the affidavit, but on 10-2-1992 also the appeal was not filed.

In the matter of Ramlal, Motilal and Chhotelal Vs. Rewa Coalfields Ltd., , the Supreme Court observed that in construing Section 5 of Limitation Act it is relevant to bear in mind two important considerations. The first consideration is that the expiration of the period of limitation prescribed for making an appeal gives rise to a right in favour of the decree-holder to treat the decree as binding between the parties and this legal right which has accrued to the decree-holder by lapse of time should not be lightly disturbed. The other consideration which cannot be ignored is that if sufficient cause for causing delay is shown, discretion is given to the Court to condone delay and admit the appeal.

In the same matter the Supreme Court also observed that it is necessary to emphasise that even after sufficient cause has been shown, the party is not entitled to condonation of delay in question as a matter of right. The proof of sufficient cause is condition precedent for the exercise of the discretionary jurisdiction vested in the Court by Section 5. This aspect of the matter naturally introduces the consideration of all relevant facts and it is at this stage that the diligence of the party or its bona fides may fall for consideration; but the scope of enquiry while exercising the discretionary power after sufficient cause is shown would naturally be limited to only such facts as the Court may regard as relevant.

Thus, it was for the appellant to explain day to day delay by showing sufficient cause and it was for her to lead all possible evidence which was available with her and in fact in the present matter she adduced the evidence by producing medical certificates as well as her own affidavit.

The first appellate Court has relied on the judgment of this Court in the matter of Hiralal v. Amarnath Batra (1986 MPLJ 149) in which this Court held that in cases falling u/s 5 of the Limitation Act what the party has to show is that he did not file his appeal on the last day of limitation prescribed therefor. That may inevitably mean that the party will have to show sufficient cause not only for non-filing the appeal on the last day of limitation, but also to explain the delay made thereafter day by day. The cause of delay which by due care and attention a party could have avoided, cannot be sufficient cause".

The learned counsel for the appellant has placed reliance on the judgment of the Supreme Court in the matter of *The State of West Bengal Vs. The Administrator, Howrah Municipality and Others*, . In the said matter Supreme Court held that "sufficient cause" cannot be construed too liberally merely because the party in default is the Government. This observation on which the learned counsel for the appellant placed reliance is irrelevant to the present matter. In the case of *State of West Bengal v. The Administrator, Howrah Municipality* (supra) the Supreme Court has also observed that the words "sufficient cause" should receive a liberal construction so as to advance substantial justice when no negligence or inaction or want of bona fide is imputable to a party. The present appellant cannot take advantage of the said observations when she had sufficient opportunity to place all necessary material before the Court for the purpose of explaining the delay and making out a case of "sufficient cause". She failed to do so. By placing reliance on medical certificates which have been mentioned above, the appellant cannot take advantage of the judgment of the Supreme Court referred to above for condonation of delay in view of the arguments which have been advanced on her behalf by her learned counsel that appellant happens to be a house wife and, therefore, she was not supposed to know the technicalities of Limitation Act. Firstly, the appellant was present with her advocate on 10-2-1992 in the Court when she has sworn affidavit. On that date her advocate could have told her what is the position of law and in fact, her application and affidavit show that she was appraised of the period of limitation. It is pertinent to note that even on 10-2-1992 the appeal was not filed. It was filed on 11-2-1992.

Learned counsel for the appellant submitted that she was not knowing the law and, therefore, the delay should have been condoned by the first appellate Court. It is pertinent to note that there is no affidavit of advocate for the appellant in support of the contention of the appellant for condonation of delay. Besides that the appellant has not explained the delay between 15-1-1992 to 28-1-92 satisfactorily which was of considerable days. The appellant could have sent her children to her counsel for the purpose of filing the appeal. Therefore, the cause which has been shown by her cannot be treated to be sufficient.

When a litigant is coming to the Court with a prayer for condonation of delay, it is his duty to place all necessary material before the Court for explaining the delay and for showing that there has been sufficient cause which entitles such litigant for condonation of delay. The enquiry which the Court is to make is limited only to the points which the Court finds relevant. It is not necessary for the Court to call the witnesses and examine them in support of the prayer for condonation of delay when such litigant does not make a prayer to the Court that particular witness or witnesses should be called and examined.

Thus, summing up all. I hereby come to the conclusion that the first appellate Court did not commit any error in dismissing the appeal as time-barred. I hold that the first appellate Court held proper enquiry and gave proper opportunity to the appellant to show cause explaining the delay. So also I hold that no injustice

has been caused to present appellant when the first appellate Court dismissed her application for condonation of delay.

Thus, the present appeal stands dismissed with costs. Counsel's fee as per schedule. Record of the case be sent back to the trial Court immediately.