

(2017) 01 MP CK 0303
In the Madhya Pradesh High Court
Case No : 389 of 2017

Smt. Shraddha Shrivastava	Vs	APPELLANT
State of Madhya Pradesh and others		RESPONDENT

Date of Decision : 05-01-2017

Acts Referred:

[Specific Relief Act, 1963](#), [Section 34](#), [Section 38](#) - Discretion of court as to declaration of status or right
- Perpetual injunction when granted
[Limitation Act, 1963](#),

Citation : (2017) 01 MP CK 0303

Hon'ble Judges : Vandana Kasrekar

Bench : Single Bench

Advocate : P. K. Mishra, J. Pandit

Judgement

1. The applicant has filed the present revision challenging the order dated 12.07.2017 passed by Additional District Judge, Nagod, District Satna in Civil Appeal No.1202/2017.

2. The applicant/plaintiff had filed Civil Suit No.07- A/2013 in the Court of First Civil Judge, Class-II, Nagod, District Satna for declaration of title and also for permanent injunction under Section 34 and 38 of the Specific Relief Act to the land bearing khasra No.158/2 area 1 Bigha 1 Dismil of Village Jaso, Tahsil Nagod, District Satna. In spite of notice, respondents did not appear nor submitted any written statement and, therefore, the trial Court proceeded ex-parte against the respondents and vide judgment and decree dated 28.02.2014 has decreed the suit filed by the applicant. Against the said judgment and decree, respondents have preferred a first appeal before the Additional District Judge, Nagod, District Satna along with an application for condonation of delay. The applicant submitted reply to the said application and submits that at the time of pronouncement of the judgment, the counsel for the respondents was also present and, therefore, it cannot be said that the respondents have no knowledge about the judgment and decree. It has further been submitted that no sufficient cause has been shown by

the respondents in the application for condonation of delay. The First Appellate Court after hearing both the parties passed an order dated 12.07.2017, thereby allowing the application preferred by the respondents under Order 5 of the Limitation Act and condoned the delay. Being aggrieved by that order, the applicant has filed the present revision.

3. Learned counsel for the applicant argues that the order dated 12.07.2017 passed by the First Appellate Court is prima facie bad in law and liable to be set aside. He submits that no sufficient ground has been made out by the respondents for condoning the delay in filing the first appeal. He further submits that as the counsel for the respondents was present at the time of pronouncement of the judgment and, therefore, it cannot be said that the respondents have no knowledge about the said judgment.

4. On the other hand, learned Government Advocate appear on advance copy supports the order passed by the trial Court. She submits that the first Appellate Court has not committed any error in condoning the delay. She further submits that although the judgment has been passed in presence of the Government Advocate, but the counsel did not inform the respondents about the said judgment. She further submits that as the settled law, the Court should adopted liberal approach in condoning the delay. In such circumstances, she submits that the first Appellate Court has rightly condoned the delay and allowed the application.

5. Heard learned counsel for the parties and perused the record as well as the order passed by the trial Court. From perusal of the order, reveals that in the present case, the applicant has filed a civil suit for declaration of title as well as permanent injunction. The respondents were proceeded ex-parte and ex-parte judgment and decree was passed by the trial Court on 28.04.2014. The said ex-parte judgment and decree, the respondents have preferred first appeal before the first Appellate Court along with an application for condonation of delay. The trial Court vide order dated 12.07.2017 has allowed the said application preferred by the respondents under Section 5 of the Limitation Act and condoned the delay. Against the said order, the applicant has filed the present revision. From the order passed by the first Appellate Court, it reveals that the Government Advocate was present on 28.02.2014 when the ex-parte judgment and decree was passed by the trial Court. However, the said Government Advocate did not inform about the said judgment and decree to the concerned department and therefore, the delay has been caused in filing the said appeal. The Apex Court in number of judgments has held that the Court should have adopted liberal approach in condoning the delay. It has further been held that the yardstick for condoning the delay cannot be made applicable to the State Government as that of the private litigant. As in the case of the State Government, the matter is required to be processed through different departments and, therefore, in the case of the State Government, the question delay is required to be liberal condoned.

6. In view of the aforesaid, I do not find any reason to interfere into the order committed by the first Appellate in condoning the delay and learned counsel for the applicant has failed to point out any jurisdiction error or material irregularity committed by the trial Court in passing the impugned order.

7. Accordingly, the revision is dismissed without any order as to costs.