

(2013) 09 KAR CK 0371

In the Karnataka High Court

Case No : Regular Second Appeal No. 1831 of 2009

Sri Pownraju K.

APPELLANT

Vs

Devaraj, Srinivasappa and K.M. Krishnachari Since dead by
L.Rs. Smt. Shanthamma, Sri Venu Achari and Sri Sreenivasa
Achari

RESPONDENT

Date of Decision : 26-09-2013

Acts Referred:

Citation : (2013) 09 KAR CK 0371

Hon'ble Judges : A.S. Pachhapure, J

Bench : Single Bench

Advocate : J. Kaladeepa, for GSP Law Inc, for the Appellant; C. Pattabhiraman,
for R1, for the Respondent

Final Decision : Disposed Off

Judgement

A.S. Pachhapure, J.—The appellant has challenged the judgment and decree in RA No. 42/2004 dismissing his application for condonation of delay and consequently the appeal as barred by time. The facts relevant for the purpose of this appeal are as under:

The appellant herein is the third defendant whereas respondents 2 and 3 were defendants 1 and 2. The first respondent instituted the suit for injunction to restrain the appellant and other defendants from causing obstruction to the peaceful possession and enjoyment of the suit property bearing Sy. No. 201 measuring 2 acres with the boundaries mentioned therein. The suit came to be decreed by the Trial Court after recording the evidence and hearing the parties. Aggrieved by the judgment and decree, the third defendant i.e., appellant herein filed RA No. 42/2004 and submitted an application IA.I to condone the delay in filing the appeal. The First Appellate Court recorded the evidence of PW1 on the interim application and considering the fact that there was no sufficient cause to condone the delay, the interim application was rejected, consequently, the appeal was dismissed. Aggrieved by the judgment and decree of the First Appellate

Court, the present appeal is filed.

2. The following substantial question of law arises for consideration:

Whether the First Appellate Court ignored the cause shown by the appellant as insufficient without considering the cause liberally to condone the delay and committed an illegality in rejecting the application for condonation of delay and consequently, dismissing the appeal?

3. I have heard learned Counsel for both the parties.

4. It is the submission of learned Counsel for the appellant that there is a delay of more than 3 years in filing this appeal as the appellant was under treatment all along for his old aged ailments in addition to allergic bronchitis and as he was advised not to travel, he claims to have stayed in Kaveripatnam at Tamilnadu and was not able to file an appeal in time.

5. In support of interim application to condone the delay, he is examined as PW1 and a certificate issued by the doctor has been produced at Ex. P1. In fact, the First Appellate Court has not considered the cause shown as sufficient for the reason that doctor was not examined and the contents of Ex. P1 was not proved. It is relevant to note that the appellant though mentioned in the application that there is a delay of 2 years 70 days, as could be seen from the affidavit filed in support of the application, the appellant has sought to condone the delay from 31.05.2001 till date of swearing to the affidavit, thereby the delay sought to be condoned as pleaded by the appellant in the affidavit is more than 3 years. It seems that counsel has committed a mistake in mentioning the delay as 2 years 70 days. This mistake on the part of counsel has to be ignored for the sole reason that in the affidavit, the appellant has pleaded to condone the delay from the date of decree till date of filing of appeal itself. Anyhow, it was necessary for the appellant to examine the doctor to establish his case. But at the same time it cannot be forgotten that the appellant was more than 75 years old and he had grievance of a serious ailment and consequent treatment for a long time. If his evidence is trustworthy, there is no loss to accept it even in the absence of the evidence of the doctor.

6. It is well established principle of law that to condone the delay, there has to be a liberal approach so as to do substantial justice to the parties on the merits of case. This aspect of the matter has not been taken into consideration by the Court below. It is no doubt true that delay is enormous and more than 3 years but in my considered opinion, the loss that has been occurred to the respondents can be compensated by awarding heavy cost with a sole purpose to do substantial justice to the parties and to see that the appeal is heard on merits and to dispose of the same in accordance with law. Taking into consideration this aspect and to condone the delay by awarding cost, the interest of justice would be met in case if a sum of Rs. 25,000/- is ordered to be paid by the appellant as cost to respondent No. 1 herein. The cost shall be deposited by the appellant before the First Appellate Court within one month from the date of this order.

Hence, the substantial question of law is answered in affirmative.

In the result, IA.I filed for condonation of delay before the First Appellate Court is allowed subject to that condition, the appellant depositing a sum of Rs. 25,000/- before the First Appellate Court. On deposit of the cost, the same shall be paid to respondent No. 1.

Consequently, the appeal is allowed. The judgment and decree of the First Appellate Court in RA No. 42/2004 is set aside. The matter is remitted back to the First Appellate Court for disposal of the same in accordance with law on merits.

As the matter is of the year 2004, the First Appellate court shall dispose of the appeal preferably within a period of four months from the date of communication of this order and the records.

Misc. Cvl. 23613/2009 for Stay and Misc. Cvl. No. 23614/2009 for additional documents do not survive for consideration and accordingly they are disposed of.

The appellant is at liberty to move the application before the First Appellate Court to permit him to produce records and if any such application is filed, the First Appellate Court shall dispose of the case being uninfluenced by the observations made above.