
(1985) 07 BOM CK 0012
In the Bombay High Court

State Bank of India

APPELLANT

Vs

Javed Textiles and others

RESPONDENT

Date of Decision : 30-07-1985

Acts Referred:

Limitation Act, 1963 — Section 5

Citation : (1985) 87 BOMLR 412 : (1988) 63 CompCas 161 : (1986) MhLj 483

Hon'ble Judges : P.B. Sawant, J;A.D. Tated, J

Bench : Division Bench

Judgement

Sawant J.

1. We are inclined to condone the delay in filing the present appeal on the following grounds:

There were in all 16 suits filed against what is otherwise known as the Ansari group of concerns and the suit from which the present appeal arises was one of them. All these suits were filed through the same advocate, Shri S.W. Oka, in the Thane Court, and against decrees in seven suits, seven appeals have been filed in this court. Six of the appeals are filed on the same ground on which the present appeal is sought to be filed. The appeals filed have been admitted and are pending decision. However, it appears that this was a lone matter in which the appeal remained to be filed in time.

2. The explanation of the appellant-bank for the delay in filing the appeal is that its advocate, Shri Oka, was under the impression that he had filed an application for a certified copy of the decree in this matter also as he had done in the remaining 15 suits. It is only later, i.e. on July 30, 1982 (the decree is dated April 22, 1982), i.e. eight days after the expiry of the period for filing the appeal, that he realised that he had not made any such application, and on that day, i.e., on July 30, 1982, he filed the application for the certified copy of the decree. The copy was ready for delivery on April 5, 1983, and delivery was taken on the same day. Shri Oka has filed his affidavit to that effect.

3. It further appears that although the copy was received on April 5, 1983, the bank handed it over to their attorneys in Bombay, M/s. Little & Co., on May 25, 1983, and the attorneys prepared the appeal and sent it to the office of the court on June 1, 1983, when they were informed that since the court was having summer vacation, the appeal would not be received till the reopening of the court. The court reopened after the vacation on June 13, 1983. However, the appeal was filed only on June 17, 1983. Thus, it is clear that initially there was a delay of about eight days in making an application for the certified copy. There was then a delay of about one month and 20 days in handing over the copy to the attorneys in Bombay and in giving them instructions to file the appeal. There was a further delay of four days in filing the appeal after the reopening of the High Court. Thus calculated, the delay is actually of about 62 days. However, as per the rules, the office has correctly calculated the delay to be of 331 days.

4. What weighs with us in condoning the delay is the fact that public institutions like banks in the present case should not be treated on par with private individuals and institutions. The property of public institutions belongs to the society in general and not to any individual or group of individuals in particular. Precisely for this reason, it appears group of individuals in particular. Precisely for this reason, it appears that no particular individual is interested in safeguarding it. What belongs to all belongs to none in particular. The affairs of public institutions are managed by paid employees some of whom are interested only in their salaries. As long as their salaries and jobs are not threatened, they take the least care in safeguarding the interest of the institutions they serve. In the hierarchy of responsibility in the bureaucratic set up which invariably accompanies these institutions, the responsibility for the loss to the institutions is hard to fix, and the employees take advantage of the same. What is more, with the growing corruption in varied forms, it is not difficult for interested parties to manage delays in taking legal proceedings against the debtors of these institutions. If the courts take a strict view of the matter without taking into consideration these realities, they will unwittingly become parties to these malpractices. In the present case, the stake is as high as Rs. 2,22,319 odd. In all cases where public institutions such as banks are involved, the stakes are bounded to be high. It will not be difficult for unscrupulous persons to make a regular business out of deliberate delays in taking appropriate legal proceedings against the debtors. We do not suggest that the present is one such case. We are only uttering a word of caution against taking a mechanical view of the provisions of the law of limitation in such matters. As a matter of fact, public institutions should not be hamstrung by any period of limitation. In the alternative, there should be a special limitation for them. This, however, is a matter which the Legislature has to tackle.

5. In the present case, whose responsibility was it to make the application for the certified copy in time? who was further responsible to instruct and deliver the copy to the attorneys in Bombay? Why was there delay in giving the instructions

and the copy? Why is it that the appeal was not filed on the day the court reopened after the summer vacation? These questions have not been satisfactory answered. However, for the reasons indicated above, we feel that public funds should not suffer whether there is or there is no satisfactory answer for the questions raised. Hence, we condone the delay and make the rule absolute.

6. The appellants will pay to respondents Nos. 1 and 3 on the one hand and respondent No. 2 on the other, costs which are fixed at Rs. 250 in each set.

7. We also direct that the bank should institute an inquiry for fixing the responsibility for the delays which have occurred at the different stages in filing the present appeal, and should take appropriate action against the persons concerned.

8. A copy of this order should be sent to the chairman of the State Bank of India.