(1985) 07 BOM CK 0019

In the Bombay High Court

Case No : Civil Application No. 99 of 1984 (In First Appeal Stamp No. 9853 of 1983 from Special Civil Suit No. 21 of 1977)

State Bank of India APPELLANT

Vs

M/s. Javed Textiles and Others RESPONDENT

Date of Decision : 30-07-1985

Acts Referred:
Limitation Act, 1963 — Section 5

Citation : AIR 1986 Bom 246 : (1986) 1 BomCR 355 : (1986) MhLj 483

Hon'ble Judges : Tated, J;Swant, J

Bench : Division Bench

Advocate : N.G. Thakkar, instructed by Sarvashri Little and Co, for the Appellant; K.J. Abhyankar and Kishandas Dalpatri, for the Respondent

Judgement

Sawant, J.—We are inclined to condone the delay in filing the present appeal on the following grounds :-

There were in all 16 suits field against what is otherwise known as 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 decisions. 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 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 the 30th July 1982 (the decree is dt. 22nd April 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 the 30th July 1982 he filed the application for the certified copy of

the decree. the copy was ready for delivery on the 5th April 1983 and the delivery on the 5th April 1983 and the 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 the 5th April 1983, the Bank handed it over to their attorneys in Bombay M/s. Little & Co. on the 25th May 1983 and the attorneys prepared the appeal and sent it to the office of the Court on the 1st June 1983 when they were informed that since the Court had summer vacation the appeal would not be received till the reopening of the Court. The Court reopened after the vacation on the 13th June 1983. However, the appeal was filed on the 17th June 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 reopening of the High Court. Thus calculated the delay is acutely of about 62 days. However, as per the rules, the office has correctly calculated the dealt to be of 331 days.

4. What weights 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 the 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 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 interests 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 institution 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 mange 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 malpractice''s. In the present case the stake is as high as Rs. 2,22,319/- and odd. In all cases where public institutions such as banks are involved, the stakes are bound to be high. It will boot be difficult for unscrupulous person 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, the public institutions should not be hamstrung by any period of limitation. In the alternative there should be a special limitation provision 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 the 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 satisfactorily 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.

The Appellants will pay to Respondents 1 and 3 on the hand and Respondent No. 2 on the other costs which are fixed at Rs. 250/- in each set.

6. 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.

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

7. Order accordingly.

