

(1998) 08 SC CK 0126

In the Supreme Court Of India

Case No : Civil Appeal No. 5983 of 1990

State Bank of India

APPELLANT

Vs

Vendanathangal Dairy Farm and Others

RESPONDENT

Date of Decision : 27-08-1998

Acts Referred:

Limitation Act, 1963 — Section 5

Citation : (2000) 10 SCC 538

Hon'ble Judges : V. N. Khare, J;B. N. Kirpal, J

Bench : Division Bench

Final Decision : Allowed

Judgement

1. In a suit filed by the appellant the trial court on 18-4-1978 passed a preliminary decree in a foreclosure suit and granted 3 months' time to the mortgagor to pay the amount decreed which was Rs 2,52,517.17 plus interest thereon. On the defendant having failed to make the payment within time right accrued to the appellant to apply for a final decree. Such an application could have been filed by 18-7-1981. There was, however, delay in this regard and an application under Order XXXIV Rule 2(1)(c)(ii) CPC was filed by the appellant on 30-1-1982. Along with this an application u/s 5 of the Limitation Act, 1963 was filed praying for condonation of delay in the filing of the said application.

2. The trial court by its short order dated 19-12-1984 rejected the application u/s 5 by observing that Section 5 of the Limitation Act, 1963 did not apply to such an application.

3. The appellant filed a civil revision before the High Court at Madras. This was filed on 22-3-1985 i.e. well within the period of 90 days. It appears that the Registry of the High Court returned this revision petition notifying certain defects in the filing of the same. This return took place on 15-6-1985 and after removing the defect the papers were re-presented on 1-7-1985. The Registry again returned the same on 4-7-1985 notifying certain other defects which were

removed and the revision petition was refiled on 10-7-1985. Nothing happened for another 10 months till on 15-5-1986 the Registry of the High Court again returned the papers asking for additional court fee of Rs 1 to be affixed and tight-set index and date was required to be added. These defects were removed and the petition was filed on 21-5-1986. Once again on 23-5-1986 the petition was returned requiring the appellant to give an explanation in regard to the delay of 84 days in the presentation of the same and the appellant was also required to affix court fee of a sum of Rs 1.50 on the certified copy of the decree. Thereupon, application u/s 5 for condonation of delay being CMP No. 7977 of 1986 was filed on 29-6-1986.

4. By order dated 26-3-1990 both the application for condonation of delay as well as the civil revision were dismissed by the High Court without giving any reason whatsoever. Hence this appeal by special leave.

5. Dealing first with the order of the High Court we are sorry to note that the High Court has chosen to dismiss the application for condonation of delay and the civil revision by a non-speaking order. Mr S.S. Ray is right in submitting that as the revision petition was initially filed well within the period of limitation merely because there were some defects which were cured without any undue delay the Court should have held that there was in fact no delay at all. Even if it be assumed that there was delay then under the circumstances the delay in refiling should, on the facts of this case, have been condoned. We are entirely in agreement with the learned counsel. As already noticed the revision petition was filed well within the period of 90 days. As and when defects were pointed out, they were cured within a short while. We fail to see how in these circumstances the delay could not have been condoned specially when we find that despite service the respondents had chosen not to enter appearance in the High Court. In our opinion, therefore, the High Court was wrong in dismissing the appellant's application u/s 5 of the Limitation Act being CMP No. 7977 of 1986.

6. Normally, after setting aside the order of the High Court dismissing the application u/s 5 we would have sent the case back to the High Court for decision on merit but in the facts of the present case that is not necessary. The reason is that the order of the trial court is palpably incorrect when the appellant's application u/s 5 was rejected and, therefore, it is unnecessary to burden the record of the High Court,

7. u/s 5 of the Limitation Act, 1963 an applicant can when filing an appeal or an application, other than an application under Order XXI CPC, ask for delay in filing of the same being condoned. In the present case it is an application which was filed by the appellant under Order XXXIV Rule 2(1)(c)(ii) and therefore, Section 5 of the Limitation Act, 1963 was clearly applicable. This being so, the decision of the trial court rejecting the application u/s 5 only on the ground that the said provision did not apply is clearly incorrect.

8. We, accordingly set aside the impugned judgment of the High Court as well as

the order dated 19-12-1984 of the trial court which had dismissed the applicant's application u/s 5 of the Limitation Act, 1963 and we direct the trial court to decide the said application u/s 5 on merits. The appeal is disposed of accordingly. There will be no order as to costs.