

(2003) 12 SHI CK 0014

In the High Court Of Himachal Pradesh

Case No : Civil Revision Petition No. 54 of 2003

State of Himachal Pradesh

APPELLANT

Vs

Puran Dutt and Others

RESPONDENT

Date of Decision : 26-12-2003

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 43 Rule 1, 100, 104, 115, 2(2)
Income Tax Act, 1922 — Section 31, 33
Limitation Act, 1963 — Section 5
Specific Relief Act, 1963 — Section 38
Transfer of Property Act, 1882 — Section 67

Citation : (2004) 1 ShimLC 170

Hon'ble Judges : Lokeshwar Singh Pantia, J

Bench : Single Bench

Advocate : M.S. Chandel, General and J.S. Guleria, Law Officer, for the Appellant; P.C. Sharma, for the Respondent

Final Decision : Allowed

Judgement

Lokeshwar Singh Pantia, J.—The above said three revision petitions are taken up and heard together as common question of fact and law is involved therein, therefore, they are being disposed of by this common order.

2. The State of Himachal Pradesh is the Defendant and the respondents are the Plaintiffs in three different suits filed by them in the Court of Sub-Judge, Ist Class, Kandaghat, District Solan. In this order the parties are referred to as ? Plaintiffs? and ?Defendant?. The State of Himachal-de- fendant has filed these revision petitions u/s 115 of the CPC against three separate orders dated 1.11.2002 passed by learned Additional District Judge, Solan in CMA. No. 266-S/6 of 2001, CMA. No. 49-S/13 of 2002 and CMA. No. 50-S/13 of 2002. By the impugned orders, the learned First Appellate Court has dismissed the application of the Defendant u/s 5 of the Limitation Act for condonation of delay in filing the appeals against the judgments and decree of the trial Court. In order to appreciated the controversy involved in the present proceedings, a few facts may

be stated.

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3. Plaintiffs-Puran Dutt and four Ors. filed Civil Suit No. 67-K/ 1 of 1998 on the file of Sub Judge, Ist Class, Kandaghat for declaration by way of fore closure and consequential relief of permanent injunction u/s 67 of the Transfer of Property Act read with Order 34 CPC and Section 38 of the Specific Relief Act. The case of the Plaintiffs was that their predecessor-in-interest was inducted as mortgagee by the predecessor- in-interest of one Bala Ram on the land comprising Khasra Nos. 4, 18 and 19, Khas 3 measuring 4-15 bighas situated in mauza Shalau Pargana Bagri Khurd, Tehsil Kandaghat, District Solan for consideration and mutation No. 49 was sanctioned by the competent authority of the land in dispute in Samvat 1964, Baisakh 8. Since then the predecessor-in-interest of the plaitniffs and after his death the Plaintiffs have been coming in possession of the land in dispute. The land in dispute had vested in the State of Himachal Pradesh in the year 1974-75. By that time the Plaintiffs and their predecessor-in-interest had already become owners in possession of the suit land by lapse of 30 years time since the date of mortgagee as the original owner Bala Ram had failed to get the land in dispute redeemed within the prescribed period but the Plaintiffs are shown as mortgagees under the State of Himachal Pradesh. Thus, the vestment of the land in dispute in the State of Himachal Pradesh itself was wrong, illegal and void and contrary to revenue entries not showing the Plaintiffs as owners after 30 years. On these premises the suit came to be filed.

4. The suit was contested and resisted by the State-Defendant on various grounds. The trial Court framed issues. The parties went to trial and led their oral and documentary evidence. Consequently the trial Court decreed the suit with costs.

Civil Revision Nos. 61 and 62 of 2003.

5. In these cases the Plaintiffs filed Civil Suit Nos. 66/1 of 1998 and 69/1 of 1998 on the file of the Sub Judge, Ist Class, Kandaghat for declaration. The pleadings are almost similar and identical to that of Civil Suit No. 67-K/I of 1998 except that in Civil Suit No. 66/1 of 1998, the land in dispute is comprised in Khasra Nos. 7 and 8 measuring 1-12 bighas whereas Civil Suit No. 69-1/1998 the extent of the land is 2.5 bighas. All the above said Civil Suits were decreed by the trial Court on 8.5.2001.

6. The State-Defendant filed three separate appeal Nos. 51-S/13 of 2002, 49-S/13 of 2002 and 50/S/13 of 2002 before the learned Additional District Judge, Solan. Alongwith appeals three separate applications u/s 5 of the Limitation Act for condonation of delay of 10-11 days in filing the appeal have been filed. The learned lower Appellate Court on examination of the applications was satisfied that no cause or reason much less sufficient ground for condonation of delay was made out, has dismissed all the three applications vide order dated 1.11.2002. Consequently on the same day all the three appeals were also dismissed as time

barred. The State of Himachal Pradesh has challenged the correctness and validity of the orders dated 1.11.2002 passed by the learned First Appellate Court by way of these revision petitions.

7. Learned Counsel for the parties have been heard at length. Mr. P.C. Sharma, learned Counsel appearing on behalf of the Plaintiffs urged that the revision petitions against the orders of dismissal of the applications u/s 5 of the Limitation Act by the First Appellate Court as well as consequential dismissal of the appeals as time barred are not maintainable. In support of this submission he has cited and relied upon the judgment of the Supreme Court in *Messrs. Mela Ram and Sons v. Commissioner of Income Tax Punjab* 1956 SC 367 . In that case their Lordships have held that the order of dismissal of appeal as time barred by limitation was one u/s 31 of Income Tax Act, 1922 and against the said order the appeal would lie u/s 33. In *Adarpriya Choudhrani Vs. Ramprotap Agarwalla*, it was held that the order of dismissal of the appeal being time barred is appealable as a decree against which second appeal u/s 100 CPC would lie. The ratio of the above said decision will be of no help and assistance to the Plaintiffs. This legal position has been settled by two decisions of this Court. In *State of Himachal Pradesh v. Bhaynsroo* 1999(3) Shim LC 417, the Hon'ble Chief Justice as he then was on consideration of the various decisions of some of the High Courts held that the order declining to condone the delay in a application filed u/s 5 of the Limitation Act, 1963, is an order against which only a revision will lie and not a 'decree' from which an appeal could be maintained either under Sections 96 and 100 of the CPC or an order which could be said to be appealable u/s 104 read with Order 43 or any other provisions of the Code. Similar view has been taken by the learned Single Judge of this Court in *State of Himachal Pradesh v. Surat Ram and Ors.* 2000 (2) Shim L C 246 . In *Mamuda Khateen and Others Vs. Beniyan Bibi and Others*, a Full Bench of the Calcutta High Court held that an order rejecting the memorandum of appeal following the rejection of an application u/s 5 of the Limitation Act for condonation of the delay in filing the appeal is not a decree but an order against which an application in revision u/s 115 of the Code may lie but no appeal under Order 43 Rule 1 of the Code can be preferred. In *Ainthu Charan Parida Vs. Sitaram Jayanarayan Firm and Another*, the Full Bench of the said High Court held that an order rejecting the memorandum of appeal or dismissing of appeal following the rejection of an application u/s 5 of the Limitation Act for condonation of delay in preferring the appeal is not a decree within the meaning of Section 2(2) of the Code of Civil Procedure. *Des Raj Vs. Om Parkash and Another*, a Division Bench of the said High Court has held that the order dismissing an appeal after dismissal of an application u/s 5 of the Limitation Act for condoning the delay in filing the appeal is not a decree within the meaning of Section 2(2) of the Code. It does not amount to conferment of the decree of the trial Court and, therefore, cannot be held to be a decree within the meaning of Section 2(2) of the Code. Similar view has been taken by the learned Single Judge of Madhya Pradesh High Court in *Bal Kishan and Others Vs. Tulsa Bai and Another*, Reliance has been placed by the

learned Single Judge on the principles laid down in the decisions reported in *Raja Kulkarni v. State of Bombay* AIR 1954 SC 73 and *Diwan Bros. Vs. Central Bank of India, Bombay and Others*, that where a statutory entitlement is non-existent no act of any Court embodying any order in the form of a decree by itself can make a final order of any Court appealable if the order was really, in fact and law, not a decree. In the light of the above said settled position of law, the orders of the learned First Appellate Court dismissing the application of the Defendant-State for condonation of delay and consequential order of dismissal of the appeals being time barred, both are revisable u/s 115 of the CPC as the said orders are not decree u/s 2(2) of the Code of Civil Procedure.

8. The next question that remains for consideration in view of the decision taken by me on the maintainability of the revisions, is as to whether the Court below was justified in coming to the conclusion that there was no sufficient cause substantiated by the Defendant in these cases for condoning the delay in filing the appeals. In *State of Haryana Vs. Chandra Mani and others*, Bench of three Hon^{ble} Judges of the Supreme Court have held that in appreciating or considering the claim for condonation of delay in filing an appeal at the instance of the State or any authority of the State or a public undertaking, the fact that the Government or such bodies are impersonal machineries and that the transaction of business of the Government or such bodies is invariably carried out by officers having no personal interest at different levels, also has to be kept into mind. In *Special Tehsildar, Land Acquisition, Kerala Vs. K.V. Ayisumma*, the said settled position of law is reiterated by the apex Court. Again in *N. Balakrishnan Vs. M. Krishnamurthy*, it was held that the condonation of delay is a matter of not only the discretion of the Court but the length of delay is no matter or the criteria in undertaking such consideration and instead the acceptability of the explanation is the only criterion and so long as the explanation is found to be sufficient, the length of the delay alone cannot be an impediment, in condoning the delay.

9. So far as the cases on hand are concerned, the reasons that were assigned were that the judgments and decree were passed by the trial Court on 8.5.2001 and certified copies were applied on 9.5.2001. The copies were supplied on 27.6.2001 by the Copying Agency. The appeal papers were sent to the office of the District Attorney on the same day who affirmed the opinion of the Additional District Attorney not to file the appeals. The papers were then sent along with the opinion to the Deputy Commissioner on 11.7.2001. The parties led their evidence before the First Appellate Court in support of their respective claim. Bansi Lal (A.W.2), Sr. Assistant Litigation Branch, Deputy Commissioner, Solan stated in his deposition that the entire record of the cases along with judgments and decree and the opinion of the District Attorney was received by him on 11.7.2001. The entire record thereafter was placed before the Revenue Officer, Deputy Commissioner and District Collector, Solan. The Collector, Solan returned the entire record to the District Attorney for second opinion. The District Attorney recorded his opinion on 30.7.2001 that the appeals should be filed against the

judgments and decree of the trial Court before the First Appellate Court. The Collector approved the opinion of the District Attorney and returned the entire record to him on 1.8.2001. The explanation rendered by the State was that the matter was dealt with by different officers at different levels which consumed considerable time for taking decision to prefer the appeals, therefore, the delay in filing the appeals was not intentional and wilful. The First Appellate Court stated in the order that neither the District Attorney nor the Collector, Solan who dealt with the cases had appeared in the witness box in order to show as to how much time was consumed by them to give opinion in these cases. On this sole ground applications for condonation of delay in filing the appeals were rejected. I fail to see or envisage better cases for the Court below to exercise its discretion in order to prevent miscarriage of justice being allowed to happen. As a matter of fact, it is this method of handling matters by the officers of the Government and Public bodies that necessitated their Lordships of the Apex Court to take a lenient view of the matter in the matter of condonation of the delay in such cases to avert miscarriage of justice due to any manipulations or indifference of those managing the affairs of such public bodies or authorities. It appears that the learned First Appellate Court has lost sight of the ratio of the judgments in State of Haryana Vs. Chandra Mani and others, cited herein above. The First Appellate Court has taken hyper technical reason to dismiss the applications which is not permissible under law.

10. The contentions of the learned Counsel for the Plaintiffs that the State of Himachal Pradesh has not placed on record any material to substantiate the reason recorded by the Deputy Commissioner for seeking second opinion from the District Attorney in regard to filing of the appeals is not tenable and sustainable. The opinion earlier given by the District Attorney was not binding on the District Collector who is the custodian of the public property involved in the suits.

11. No other point is urged by the learned Counsel for the parties.

12. For the above said reasons, I am of the view that the First Appellate Court has not properly applied his mind to the various principles laid down which should weigh with the Court considering the question of condonation of delay in filing appeals or any other proceedings and judging the issue concerning the sufficiency or otherwise of the cause so pleaded in support of or justification of the claim for condonation. The cases on hand involve substantial rights to property and that too public property and adjudication on merits of the claim atleast by one appellate Court cannot be allowed to be defeated by taking a harsh or too technical view of the matter in appreciating the genuineness as well as sufficiency of the cause shown in these cases.

13. For the above said reasons, the orders of the learned First Appellate Court passed in CMA. Nos. 266-S/6 of 2001, 49-S/13 of 2002 and 50-S/13 of 2002 impugned in these petitions as well as consequential orders dismissing three appeals being time barred are set aside. The revision petitions will stand allowed

and the learned Additional District Judge, Solan is directed to restore the appeals filed by the Petitioner-State against the judgments and decree passed by learned Sub-Judge, 1st Class, Kandaghat dated 8.5.2001 in Civil Suits No. 67-K/I of 1998, 66/1 of 1998 and 69-1 of 1998 to their original numbers and dispose them on merits in accordance with law after giving due and sufficient opportunity to both the parties. Costs on parties.

14. The parties are directed through their learned Counsel to appear before the learned Additional District Judge, Solan on 15.1.2004 for further orders.