

(1986) 08 J&K CK 0001

In the Jammu And Kashmir High Court

Case No : Civil First Miscellaneous Appeal No. 44 of 1979

State of Jammu and Kashmir

APPELLANT

Vs

Ram Kali

RESPONDENT

Date of Decision : 25-08-1986

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 144
Limitation Act, 1963 — Section 5

Citation : AIR 1987 J&K 71

Hon'ble Judges : Mazhar Ali Shah, J; Krishan Kumar Gupta, J

Bench : Division Bench

Advocate : R.P. Bakshi, for the Appellant; V.K. Chopra, for the Respondent

Final Decision : Dismissed

Judgement

Shah, J.—On a suit filed by late Tota Ram, husband of the present respondent for the recovery of the amount, an amount of Rs. 18,572/-

was paid to the plaintiff late Tota Ram by means of a preliminary decree passed by the Court below, which was ultimately set aside on appeal by

the High Court. In consequence whereof the respondent was bound for restitution and to repay the amount paid under a decree, which was later

set aside by the High Court. The appellant, who was the defendant in the said suit filed an application before the trial Court (District Judge), Jammu

on Dec. 17, 1971 for restitution u/s 144 of the CPC claiming the repayment of the amount of Rs. 18,572.20 paise paid to the husband of the

respondent late Tota Ram under the preliminary decree, which stood set aside. The application was contested inter alia on the ground that no such

relief can be granted at this stage, as the respondent has filed a suit for recovery of Rs. 23,785.42 paise against the present appellant after adjusting

the said amount of Rs. 18,572.20 paise which was received by him under the preliminary decree of which the restitution is sought. The learned trial

Court after considering the application and the objections filed held under the impugned order that the question of refund of this amount at this

stage does not arise holding that the defendant/present appellant is, however, at liberty to seek any other remedy for the same, if he feels his claim

a genuine one. It is further found by the learned trial Court that the amount so claimed was lying with the appellant in deposit for the

plaintiff/respondent, thus the application was rejected.

2. The appellant being aggrieved by the order passed on May 19, 1977 first filed a revision before this Court. On a preliminary objection raised on

behalf of the respondent in C.M.P. No. 109 of 1977 that the revision is not maintainable against the impugned order, as the same is purported to

have been passed u/s 144 of the Code of Civil Procedure, which is appealable. This Court after hearing the respective parties, by order dated

May 4, 1979 upheld the preliminary objection and on submission of counsel for the petitioner allowed the revision petition to be converted into

appeal with the direction that the appellant will deposit the necessary Court fee, if not already paid. It is further held that the question of limitation

is, however, left open to be decided by the Division Bench, which will hear and dispose of the appeal. In accordance with Rule 14 of the Jammu

and Kashmir High Court Rules, 1975, since the appeal of the valuation of more than Rs. 15,000/- is required to be placed for admission and

hearing before a Division Bench of this Court, the present appeal, which is registered as Civil First Miscellaneous Appeal No. 44 of 1979 on 12-

11-1979 has come up for hearing before us.

3. At the outset, learned counsel for the respondent raised a preliminary objection regarding limitation and submitted that the impugned order was

passed by learned District Judge, Udhampur on May 19, 1977 in accordance with the limitation prescribed for filing revision or appeal to the High

Court, the period of 90 days prescribed expired on August 17, 1977 as the intervening two months of May and July were of 31 days, the

appellant applied for the supply of certified copy on August 29, 1977, which according to the certified copy was ready on 2-9-1977 and delivered

to the appellant on the same day. The revision was filed initially on 1-11-1977.

The application for condonation of delay in filing the revision was filed after 11 days of the filing the revision, i.e., 12-11-1977, which was disposed of in default of the filing the objections by the respondent by the Court on Nov. 23, 1978 condoning the delay in filing the revision. However, while the revision was converted into an appeal, the learned single Judge left the question of limitation open in appeal, hence the objection. Even treating the appeal to be filed on 1-11-1977, when the revision was filed, which is allowed to be converted into an appeal for computing the copying days, i.e. 29th August and 2nd of September, 1977 both days inclusive are counted at only 5 days meaning thereby that the appellant should have filed the revision or even the appeal within 95 days as provided u/s 12 of the Limitation Act after computing the period of copying days, the appeal which was due to be filed on 17-8-1977 should have been filed at the most by 22-8-1977; whereas the present appeal has been filed on 1-11-1977, which is barred by 70 days. Learned counsel for the appellant in reply to the preliminary objection regarding limitation placed reliance on the disposed of application, which was filed by him on 12-11-1977 for condonation of delay and submitted that the learned single Judge after having once condoned the delay by his order dated Nov. 23, 1978 was left with no jurisdiction to revive the question of limitation by his order dated May 4, 1979, when he allowed the revision to be converted into an appeal.

4. On considering the rival arguments and the order passed by the learned single Judge on the application of the appellant on Nov. 23, 1978, we find that the argument advanced by the learned counsel for the appellant is fallacious. Once it has been found that the appeal is entertainable by the Division Bench, the learned single Judge loses his jurisdiction to condone the delay on the application u/s 5 of the Limitation Act, thus even if the order is passed condoning the delay in favour of the appellant, the said order ipso facto becomes without jurisdiction and cannot be treated as an order in the eye of law as is rightly ordered by the learned single Judge that the question of limitation will remain open to the respondent. Similarly first of all before the Division Bench, if the appellant places his reliance on a disposed of application u/s 5 of the Limitation Act, there is no application before the Division Bench to consider the question of condonation.

Even assuming the said application for the condonation of delay for the purposes of the present appeal on the very face of the contents of the application as well as the dates enumerated in the preceding para we find

that no cause much less a sufficient cause is made out to condone the delay on the said application. It is held by a Division Bench of Andhra

Pradesh High Court in *The Special Deputy Collector, Land Acquisition (Industries) Hyderabad Vs. Nawab Turab Yar Jung and Others*, that,

The expression "'sufficient cause'" in Section 5 cannot be construed liberally merely because the defaulting party is the Government and every day's delay must be satisfactorily explained.

Reliance is also placed in the said authority on *The State of West Bengal Vs. The Administrator, Howrah Municipality and Others*, . In the instant

case the application, which was admittedly not filed along with the revision when filed after 11 days does not even mention the cause of non-filing

the application along with the revision what to talk of each day's delay. Simply mentioning.

The delay in this case has accrued as the matter was referred to the Law Deptt. and the office of the Executive Engineer, Chenani Hydel Project,

who is dealing with the case, and the Govt. Offices such as Law Deptt. etc. were also at Srinagar, and the matter being in rotation through proper

channels took time.

In our opinion the above said explanation without mentioning the specific dates and the reasons for delay explaining each day of delay is no cause

at all much less a sufficient cause for condonation of delay in filing the revision or an appeal within the meaning of Section 5 of the Limitation Act.

We are, therefore, in full agreement with the ratio of the authority of the Andhra Pradesh High Court, *The Special Deputy Collector, Land*

Acquisition (Industries) Hyderabad Vs. Nawab Turab Yar Jung and Others, and hold that no exception is made for the Government in the matter

of condonation of delay, which is not satisfactorily explained in terms of the Act. As discussed above, we find that the appeal is hopelessly barred

by limitation, which has been filed 70 days after the period of limitation prescribed enumerated in para 3 of this judgment. Thus even on reviving the

application u/s 5 of the Limitation Act, the same is dismissed for the want of sufficient cause. In consequence of the dismissal of the application u/s

5 of the Limitation Act, the Civil First Miscellaneous Appeal No. 44 of 1979 is also dismissed as barred by limitation. Under the circumstances,

parties are left to bear their own costs. The record of the case be sent back forthwith for further proceedings according to law.