
(2002) 08 AHC CK 0145
In the Allahabad High Court
Case No : Second Appeal No. 1696 of 1983

State of U.P.

APPELLANT

Vs

Harphool and Others

RESPONDENT

Date of Decision : 14-08-2002

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 100, 96
Limitation Act, 1963 — Section 5

Citation : (2002) 4 AWC 2884 : (2002) 93 RD 855

Hon'ble Judges : Rakesh Tiwari, J

Bench : Single Bench

Advocate : B.L. Yadav, S.C. and G.C. Tripathi, for the Appellant;

Final Decision : Dismissed

Judgement

Rakesh Tiwari, J.—Heard the learned counsel for the parties and perused the records.

2. The aforesaid appeal arises out of the judgment and decree dated 29.4.1983 passed in Misc. Appeal No. 318 of 1981, Shri Dharendra Pal Varshaney v. Vith Additional District Judge, Meerut, arising out of judgment in O. S. No. 114 of 1978. By the impugned judgment, the court below has not condoned the delay u/s 5 of the Limitation Act in filing the civil appeal, hence the second appeal.

3. It has been urged that the lower appellate court has erred in law in rejecting the application for condonation of delay wholly on arbitrary and untenable grounds. It is submitted that the reasons disclosed in the affidavit given in support of the application u/s 5 of the Limitation Act were uncontroverted. Since there is no negligence attributed on the part of the appellant inasmuch as the delay has occurred on the fact that the official, who was having the concerned file in his custody, was transferred on 22.7.1981 and the new official, who took the charge, came across with the concerned file on 4.8.1981. He, therefore, approached the counsel for filing the appeal immediately. The appeal was filed on

5.8.1981 with an application u/s 5 of the Limitation Act supported with an affidavit. According to the appellant, the delay in filing the civil appeal was only of a few days, which under the circumstances could not be held due to the fault of the concerned official and the delay is liable to be condoned in the interest of justice.

4. The brief facts of this case are that the plaintiff-respondents were owners and in occupation of Khasra No. 903 situate in village Saroorpur. Tehsil Baghpat, district Meerut. There is a chak-road on the south of the said plot and in the southern side of the chak-road, there is a nali. The chak-road goes to village Sujra and is being metalled. It is alleged that in collusion with the owners of Khasras No. 834 and 836 and in order to give them undue advantage, the officials of the State want to construct the chak-road from Khasra No. 903 of the plaintiffs-respondents for which they are not ready as Khasra No. 889 was left and earmarked for the chak-road during the consolidation proceedings.

5. The following issues were framed in Suit No. 114 of 1978 :

1- D;k izfroknhx.k oknhx.k ds [kljk ua- 903 ij IM+d cuk jgs gS A

2- D;k okn dk ewY;kadu de fd;k x;k gS vkSj U;k; "kqYd de vnk fd;k x;k gS A

3- D;k oknhx.k dks izfroknhx.k ds fo:)] izLrqr okn ;ksftr djus dk dksbZ dkj.k mRiUu ugha gksrk tSlk fd izfrokn i= dh /kkjk 12 esa dgk gS A

4- D;k izLrqr okn vLi"V gS tSlk fd izfrokn i= dh /kkjk 14 esa dgk gS A

5- D;k okn esa vko";d i{kdkj u cuk;s tkus dk gS A

6- D;k izLrqr okn esa /kkjk 106 izns"k iapk;r jkT; ,DV o 80 lh- ih- lh- dk uksfVI u fn;s tkus dk nks"k gS A

7- vuqrks"k A

6. While deciding issue No. 1, it was agreed during arguments between the parties, which is as under :

^^oknhx.k ds vuqlkj izfroknhx.k muds [kljk ua- 903 ds dqN jdcs IM+d cukuk pkgrs gSa tcfd pdcUnh ds nkSjku pdjksM+ ds fy;s [kljk ua- 889 NksM+k x;k gS vkSj tks fd oknhx.k ds pd ds nf{k.k esa fLFkr gS A dkxt la[k 38x A ij miyC/k f"ktjs dh udy ls ;g Kkr gksrk gS fd [kljk ua- 889 pdjksM+ ds fy;s lqjf{kr txg gS A izfroknhx.k us vius izfrokn i= esa ;g dgk fd mudh ;kstuk dsoy [kljk ua- 889 okyh pdjksM+ dks iDdk djus dh gS vkSj fdLh O;fDr dh fo"ks"k Hkwfe esa jkLrk dk;e djus dh ;kstuk ugha gS A cgl ds nkSjku izfroknhx.k ds fo}ku vfHkoDrk us ;g fo"okl fnyk;k fd og fookfnr IM+d pdcUnh ds nkSjku NksM+s x;s [kljk ua- 889 esa gh cuk;sxas vkSj og oknhx.k dh fdLh Hkh Hkwfe ij vukf/k?r :i ls IM+d ugha cuk;sxas A oknh lk{k 1 us viuh izfrijh{k esa ;g dgk fd vxj IM+d f"ktjs ds vuqlkj cuk;h tk; rks mls dksbZ ,srjkt ugha gksxk A izfroknhx.k ds [kljk ua- 903 ds fdLh Hkkx ij f"ktjs ds f[kykQ iDdh IM+d cuk;s A bu lc rF;ksa dks vkids le{k j[krs gq;s eSa bl fu"d"kZ ij igq?prk gw? fd izfroknhx.k [kljk ua- 889 esa f"ktjs ds vuqlkj

iDdh pdjksM+ cuk ldrk gS vkSj mUgsa dksbZ ,slk vf/kdkj ugha gs fd og oknhx.k ds [kljk ua- 903 esa f"ktjk ds f[kykQ jkLrk dk;e djsa A ;g okn fcUnq blh izdkj fuf.kZr fd;k tkrk gS A**

7. Aggrieved from the judgment and order passed by the Munsif Baghpat, Meerut in Suit No. 114 of 1978, an appeal was filed along with an application u/s 5 of the Limitation Act in the Court of VIth Additional District Judge. Meerut, which was registered as Misc. Appeal No. 318 of 1981. The said appeal was dismissed on the ground of delay vide order dated 29.4.1983, which is as under :

"29.4.1983. Condonation of delay in filing the appeal by the State Government is sought on the ground of lapse by the officials of the Collectorate and the wilful default that they are alleged to have committed in handing over and taking over the charge of the respective offices. Only an affidavit is relied on in that behalf and it is not shown as to what action, if any, was taken by the concerned authorities against the erring officials. I am led to an impression that a very convenient way of explaining the delay is being adopted and the bureaucratic red tape would be encouraged to monstrous proportion if this kind of statement and sweet says self and self perpetuation in nature are accepted. As it is the concerned who would gleefully continue to work in their bad old ways but this Court at least is not prepared to provide a cover to that kind of bureaucratic slumber.

Rejected accordingly.

Sd. Illegible

VIth Additional District Judge,

Meerut

8. It is settled law that the condonation of delay is a discretionary matter. This discretion has been conferred on the Court in order to advance substantial justice. The court below did not find the reason given by the appellant to be sufficient. On the contrary, this Court has impression that it is a lame excuse. I do not find from the record that the discretion has not been properly exercised.

9. The Apex Court in Ramlal, Motilal and Chhotelal Vs. Rewa Coalfields Ltd., has held :

"Mere proof of the existence of sufficient cause, for not filing the proceedings within the prescribed period does not, under the section, ipso facto, compel the Court to extend the time. The Court has discretion to admit or refuse to admit the proceedings, even if sufficient cause is shown, as is made clear by the words "may be admitted". Thus, the existence of sufficient cause for not filing the proceeding in a time is a condition that must be satisfied before the Court can exercise its power of granting or refusing to grant the extension of time."

10. The law regarding limitation is not a question of jurisdiction rather, is a mixed question of law and fact. The extension of time is a matter of concession for

indulgence to the applicant and cannot be claimed by him as a matter of absolute right.

11. There is no substantial question of law involved in this case. The court below has also given fact finding on issue No. 1 that the State has admitted that it is not going to construct chak-road on any other plot except on plot No. 903 shown in consolidation map.

12. Thus, in any case, there is no illegality in the order passed by the lower appellate court regarding jurisdiction or any question of law involved in this appeal.

13. The appeal is dismissed.