

(2008) 01 UK CK 0016
In the Uttarakhand High Court
Case No : D.S.A. No. 28 of 2007

State of Uttarakhand and Others	Vs	APPELLANT
Smt. Bintul and Another		RESPONDENT

Date of Decision : 04-01-2008

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 41 Rule 11, 100, 5

Citation : (2008) 1 UC 508

Hon'ble Judges : Rajesh Tandon, J

Bench : Single Bench

Advocate : Vipul Sharma, for the Respondent

Final Decision : Dismissed

Judgement

Rajesh Tandon, J.—Heard Standing Counsel for the Appellant and Sri Vipul Sharma, counsel for the Respondents.

2. By the present Defective Second Appeal, Appellant has prayed for setting aside the judgment and decree dated 5-2-2003 passed by the Additional District Judge/IIIrd F.T.C. Udham Singh Nagar in Civil Appeal No. 30 of 1999 Smt. Bintul v. Ziledar and Ors.

3. Along with the present appeal, application has been filed for condonation of delay in filing the appeal.

4. Present appeal has been filed with delay of 1680 days. The delay condonation application has been filed stating therein to the following effect:

5. That the Appellants received a caveat notice from the Plaintiffs/Respondents on 15-9-2007 thereupon the matter was re-considered as the officers had been transferred in the meantime.

6. That the opinion of the District Government Counsel (Civil) was also sought the opinion to file the second appeal in the matter and thereafter papers were moved for obtaining necessary permission for filing the appeal.

7. That the permission was granted vide order dd. 12-11-2007 which was received in the office of the Executive Engineer, Irrigation Department, Udham Singh Nagaron 20-11-2007 who contacted the office of the Chief Standing Counsel High Court, Nainital for filing the appeal. When the papers were placed before the standing counsel for preparation of this appeal certain documents were required by him. After those papers were collected they were sent to the counsel who then prepare this second appeal and same is being filed without any delay.

8. That delay in filing the above appeal has been caused due to above reasons which were bonafide and are not deliberate inaction on the part of the Appellants.

9. That the property in dispute is valuable public property and the Government shall suffer irreparable injury if the delay condonation of the appeal not condoned.

5. Against this delay condonation application an objection has been filed by the counsel for the Respondents Sri Vipul Sharma and he has vehemently opposed the same.

6. As will appear from the aforesaid that the judgment was passed in the year, 2003 and there being no explanation as to what happened between 2003 to 2007 and the sanction was obtained in the year, 2007, therefore, none can be blamed for the same, therefore, delay in filing the appeal cannot be condoned.

7. In Ramlal, Motilal and Chhotelal Vs. Rewa Coalfields Ltd., , the Apex Court has observed as under:

7. In construing Section 5 it is relevant to bear in mind two important considerations is that the expiration of the period of limitation prescribed for making an appeal gives rise to a right in favour of the decree holder to treat the decree as binding between the parties. In other words, when the period of limitation prescribed has expired the decree-holder has obtained a benefit under the law of limitation to treat the decree as beyond challenge and this legal right which has accrued to the decree-holder by lapse of time should not be light-heartedly distributed. The other consideration which cannot be ignored is that if sufficient cause for excusing delay is shown discretion is given to the Court to condoned delay and admit the appeal. This discretion has been deliberately conferred on the Court in order that judicial power and discretion in that behalf should be exercised to advance substantial justice.

(12) It is, however, necessary to emphasise that even after sufficient cause has been shown a party is not entitled to the condonation of delay in question as a matter of right. The proof of a sufficient cause is a condition precedent for the exercise of the discretionary jurisdiction vested in the Court by Section 5. If sufficient cause is not proved nothing further has to be done; the application for condoning the delay has to be dismissed on that ground alone. If sufficient cause is shown then the Court has to enquire whether in its discretion it should condone the delay.

8. Relying upon the aforesaid judgment in State of U.P. v. Harphool and Ors. 2002 (93) R.D. 855, High Court of Allahabad has observed as under:

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 proceedings 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 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.

9. Counsel for the Respondents has further referred The Spl. Land Acquisition Officer U.K.R. v. Rayanagouda since deceased by his L.Rs. 2001 A.I.H.C. 399 Karnataka High Court, State of A.P. and Anr. v. Sayanna and Anr. 2000 AIHC 3616, The Land Acquisition Officer HUDA Hyderabad and etc. v. A.S. Krishna and Company 2000 AIHC 89 , Laxman N. Divekar Vs. State of Maharashtra, , State Govt. of Bihar and Others Vs. Sunil Kumar Singh and Others, and State of Bihar and Another Vs. Puran Chandra Mahto, . All the aforesaid case laws are with regard to the limitation observing that there should be a reasonable ground to condone the delay.

10. In view of the above, I do not find any ground to condone the delay in filing the appeal and further no ground to interfere with the Appeal u/s 100 of the CPC and the appeal deserves to be dismissed under Order 41 Rule 11 of the Code of Civil Procedure.

11. Consequently, Second Appeal is dismissed along with all the pending applications. No order as to costs.