
(2019) 11 MP CK 0035
In the Madhya Pradesh High Court
Case No : Second Appeal No. 2988 Of 2018

Umashankar Dubey

APPELLANT

Vs

Chief Engineer

RESPONDENT

Date of Decision : 02-11-2019

Acts Referred:

Code Of Civil Procedure, 1908 — Section 100
Limitation Act, 1963 — Section 5

Citation : (2019) 11 MP CK 0035

Hon'ble Judges : G.S. Ahluwalia, J

Bench : Single Bench

Advocate : G.P. Chaurasiya, S.N. Seth

Final Decision : Allowed

Judgement

This second appeal under Section 100 of CPC has been filed against the order dated 13.10.2018 passed by 1st ADJ, Dabra District Gwalior in an unregistered Regular Civil Appeal No. 0/2017, by which the application filed by the appellants under Section 5 of the Indian Limitation Act has been rejected and consequently the Regular Civil Appeal was also dismissed as barred by time.

The appeal is admitted on the following substantial questions of law:-

(i) Whether the Court below failed to see that the appellants have made out sufficient cause for condonation of delay or not ?

(ii) Whether, in fact the Regular Civil Appeal filed by appellant was barred by time ?

Since the question involved in the present appeal can be decided at the motion hearing stage itself, therefore, with the consent of parties, the case was heard finally.

It appears that the appellants had filed a suit for mandatory and permanent injunction. The said suit was dismissed by the Court of First Civil Judge, Class-I,

Bhitarwar District Gwalior by judgment and decree dated 27.09.2017 passed in Civil Suit No. 200023-A/2015. It appears that the appellants filed an application for grant of certified copy on 24.10.2017 and the said copy was ready and delivered on 02.11.2017. Regular Civil Appeal was presented by the appellant on 06.11.2017. An application under Section 5 of the Indian Limitation Act for condonation of delay in filing the appeal was also filed along with the memo of appeal. Notices were issued to the respondents and the Trial Court by the impugned order dated 13.10.2018 rejected the application filed under Section 5 of the Indian Limitation Act, as a consequence thereof, also dismissed Regular Civil Appeal as barred by time.

Heard the learned counsel for the parties.

Challenging the order passed by the Court below, it is submitted by the counsel for the appellant that the Court below has ignored the fact that there was only a delay of seven days and the prayer for condonation of delay is to be considered in a most lenient manner and the Appellate Court committed a mistake by holding that the appellants were negligent in verifying the outcome of the suit.

Per contra, counsel for the State has supported the findings given by the Court below.

Heard the learned counsel for the parties.

The Court below has held that the suit was dismissed by judgment and decree dated 27.09.2017, whereas according to the appellants, whenever they contacted the Reader of the Court about the outcome of the suit, then every time they were informed that the file is in the house of the Presiding Judge and only on 24.10.2017 the outcome of the civil suit was disclosed to them and, accordingly, on the same day, the application for grant of certified copy was filed and the copy was delivered on 02.11.2017 and on 03.11.2017 the appellants handed over the certified copy of the judgment to the counsel along with the fee and since 04.11.2017 and 05.11.2017 were holiday, therefore, the appeal was filed on 06.11.2017. The Appellate Court has held that the stand taken by the appellants about delayed disclosure of outcome of the suit by the Reader of the Court cannot be accepted. Thus, it was held that the appellants were negligent in verifying the outcome of the suit.

According to the appellants, the civil suit was decided by judgment and decree dated 27.09.2017 and they came to know about the outcome of the suit on 24.10.2017, i.e., within 30 days from the date of delivery of the judgment of the Trial Court.

In the considered opinion of this Court, the reason assigned by the Appellate Court that the appellants were negligent in verifying the outcome of the suit within a period of 30 days cannot be accepted. The application for grant of certified copy was filed on 24.10.2017, i.e., on 27th day of passing of the judgment and decree by the Trial Court and the copy was ready and delivered on

02.11.2017 and according to the application, 4th and 5th November, 2017 were holiday and, therefore, the appeal was filed on 06.11.2017.

Thus, this Court is of the considered opinion that while considering the prayer for condonation of delay, the Appellate Court should not have considered this aspect as to why the application for grant of certified copy was filed belatedly specifically when the same was filed within the statutory period of 30 days.

If the period of limitation as per endorsement made by copying section is calculated, the following situation would arise:-

Date of order

:

27.09.2017

Date of filing

:

06.11.2017

Total days

:

40 days

Certified copy applied

:

24.10.2017

Certified copy ready & supplied

:

02.11.2017

Copying time

:

10 days

40-10 = 30 days, i.e., within time

Under these circumstances, this Court is of the considered opinion that the Appellate Court committed a material illegality by rejecting the application under Section 5 of the Indian Limitation Act. In fact, after calculating the limitation, the Appellate Court should have rejected the application filed under Section 5 of the Indian Limitation Act on the ground that it was not required and in fact, the appeal itself was within the period of limitation. It appears that the application

under Section 5 of the Indian Limitation Act has been decided in a most casual manner, without even calculating the period of limitation and even no report was called from the office and period of limitation was not calculated by the office also.

Since this Court has come to a conclusion that the appeal before the Appellate Court was filed on the last date of limitation, therefore, the appeal was not barred by time. Hence, substantial question of law No. (ii) is answered in affirmative. Consequently, it is not required to answer the substantial question of law No. (i).

Accordingly, the appeal succeeds and is hereby allowed. The order dated 13.10.2018 passed by the Court below in an unregistered Regular Civil Appeal No. 0/2017 is hereby set aside. It is held that the Regular Civil Appeal filed by the appellant was within the period of limitation.

The matter is remanded back to the Court below for deciding the appeal within six months.

Office is directed to return back the record.