
(2000) 02 P&H CK 0105

In the Punjab And Haryana At Chandigarh

Case No : Civil Miscellaneous No. 5914-C of 1997 in Regular Second Appeal No. 3405 of 1997

United Commercial Bank and Another

APPELLANT

Vs

Tejinder Singh Navtej

RESPONDENT

Date of Decision : 23-02-2000

Acts Referred:

Limitation (Amendment) Act, 1903 — Section 5

Citation : (2000) 126 PLR 32 : (2000) 2 RCR(Civil) 241

Hon'ble Judges : R.L. Anand, J

Bench : Single Bench

Advocate : J.S. Bhatti, for the Appellant; R.S. Bajaj, for the Respondent

Final Decision : Dismissed

Judgement

R.L. Anand, J.—This order shall dispose of an application u/s 5 of the Limitation Act dated 10.11.1997, seeking the condonation of delay of 352 days in filing the present Regular Second Appeal.

2. Against the judgment and decree dated 24.7.1996 passed by the Court of Additional District Judge, Chandigarh, the United Commercial Bank present applicant-appellant filed the present Regular Second Appeal in the Registry on 10.11.1997 along with an application u/s 5 of the Limitation Act and it is averred that the appeal of the plaintiff-respondent was allowed by the first appellate Court on 24.7.1996. The counsel for the Bank communicated to the Bank regarding the same but due to postal delay the same was not received by the Bank. The respondent-plaintiff filed one application in the Bank to comply with the orders of the learned Additional District Judge, Chandigarh and in this manner, the present appellant-bank came to know of the decision of the Court on 12.9.1997. It is further averred in the application that the delay on the part of the appellant is neither intentional nor deliberate. The application was supported by an affidavit.

3. Notice of the application was given to the plaintiff-respondent and preliminary objection was taken that the application u/s 5 of the Limitation Act was totally vague containing no material particulars explanation how and why the delay of about 2 years took place in the filing of the appeal. On merits the stand of the respondent is that the application is misleading and misconceived. Before the appellate Court, the matter was being prosecuted by the Bank and it cannot be stated that the Bank had no knowledge of the passing of the decree by the first appellate Court. With this defence the defendant has prayed for dismissal of the application u/s 5 of the Limitation Act.

4. I have heard Shri J.S. Bhatt, Advocate appearing on behalf of the applicant-appellant and Shri R.S. Bajaj, learned counsel appearing on behalf of the respondent and with their assistance have gone through the record of this case.

5. Learned counsel for the appellant-applicant submitted that there was no mala fides on the part of the Bank when it has filed the Regular Second Appeal. The Bank had been prosecuting the case before the Courts below with due diligence. The delay in filing the present appeal has occurred because the lawyer of the Bank could not communicate about the decision of the first appellate Court and there was some postal delay in receiving the information. The plaintiff-Bank came to the know of the passing of the decree by the first appellate Court in the month of September, 1997 and thereafter, no lapse has been committed by the Bank in filing the present Regular Second Appeal.

6. On the contrary, it was urged by Mr. R.S. Bajaj, that the appeal is hopelessly barred by limitation. There is no sufficient cause. The application of the Bank is hopelessly vague. There is no indication when the lawyer of the Bank informed the Bank about the decision of the appeal. The Bank has not prima facie placed any record to show as to when the communication was received by the Bank from the lawyer. The affidavit of the lawyer has also not been attached with the application u/s 5 of the Limitation Act so as to prove bona fides of the Bank.

7. After hearing the learned counsel for the parties, this Court is of the considered opinion that no sufficient cause has been made out in the application u/s 5 of the Limitation Act. There is a long delay of 352 days in filing the present appeal. The case set up by the Bank in the application u/s 5 of the Limitation Act is that there was a postal delay in receiving the communication from the lawyer of the Bank and for that reason the Bank could not get the knowledge of the decision. Along with the application u/s 5 of the Limitation Act, no affidavit of the lawyer has been filed. The Bank has also not produced any postal receipt to show that the lawyer wrote any letter to the bank informing about the decision of the appeal. The Divisional Manager of the United Commercial Bank is carrying on its business on behalf of the Bank at Chandigarh. The appeal was decided at Chandigarh. It is not believable that the lawyer of the Bank had not informed the Bank about the decision of the appeal. If the Bank has taken its own leisure time in deciding as to whether the appeal is to be filed or not, the opposite party should not suffer for that reason. It is true that as per the latest trend of the

Judgment of the Supreme Court, the liberal interpretation should be given but the law will help those who are vigilant and will not help a litigant who wants to sleep over his own rights. When the case is not instituted within the prescribed period of limitation the opposite party has the right to presume that the other party is not interested in the litigation.

8. On merits, the learned counsel for the appellant-applicant tried to convince this Court that the judgment of the first appellate Court is against the law. I do not want to go to this aspect of this case at this juncture as in the opinion of this Court the Regular Second Appeal is hopelessly barred by limitation and in the application u/s 5 of the Limitation Act, no sufficient cause is made out within the meaning of that Section.

9. Resultantly, I dismiss this application u/s 5 of the Limitation Act. Consequently, the main appeal of the Bank is also dismissed being beyond limitation. Dasti no payment.