
(2020) 02 RAJ CK 0210
In the Rajasthan High Court
Case No : Civil Writ Petition No. 12389 Of 2019

Vichitra Singh

APPELLANT

Vs

Mahindra Singh And Ors

RESPONDENT

Date of Decision : 10-02-2020

Acts Referred:

Limitation Act, 1963 — Section 5, 14

Code of Civil Procedure, 1908 — Order 39 Rule 1, Order 39 Rule 2, Order 43 Rule 1(r)

Citation : (2020) 02 RAJ CK 0210

Hon'ble Judges : Arun Bhansali, J

Bench : Single Bench

Advocate : S.L. Jain, Rajni Kaushik

Final Decision : Allowed

Judgement

This writ petition has been filed by the petitioner aggrieved against the order dated 2.8.2019 (Annex.3) passed by the Additional District Judge, Anoopgarh, District Sriganganagar, whereby, the application filed by the petitioner under Section 5 of the Limitation Act alongwith an appeal under Order XLIII Rule 1(r) CPC has been rejected.

The order dated 17.6.2019 was passed by the trial court rejecting the prayer of the petitioner for grant of ad interim injunction.

Feeling aggrieved, the petitioner filed SBCWP No.9300/2019 before this Court.

The said writ petition came to be decided by order dated 10.7.2019, wherein, the Court observed that the order dated 17.6.2019 was open to appeal and as such rejected the writ petition filed by the petitioner with liberty to avail the remedy of appeal.

It appears that the petitioner filed the appeal before the appellate court on 24.7.2019 alongwith an application under Section 5 of the Limitation Act inter alia seeking condonation of delay on account of filing of the petition before the

High Court.

The application was contested by the respondents.

The appellate court by its order impugned, came to the conclusion that the plea inter alia raised by the petitioner that after dismissal of the writ petition when the petitioner applied for a fresh copy of the order impugned dated 17.6.2019, the same was not made available to him requiring the petitioner to file a fresh application, which led to the delay in filing the appeal, was not acceptable for lack of any material in this regard and consequently, despite there being a delay of only 6 days in filing the appeal, the application under Section 5 of the Limitation Act as well as the appeal was rejected.

Learned counsel for the petitioner made submissions that the rejection was not justified inasmuch as the period, which the petitioner had spent before this Court in prosecuting the writ petition was also required to be taken into consideration under provisions of Section 14 of the Limitation Act and that fact of petitioner filing application on 17.7.2019 is proved from the copies which have now been obtained by the petitioner and filed alongwith the writ petition and, therefore, the order impugned deserves to be quashed and set aside.

Learned counsel for the respondents supported the order impugned and made submissions that the appeal has been filed against rejection of prayer for ad interim injunction. The main application under Order XXXIX Rule 1 & 2 CPC is ripe for arguments before the trial court and the next date fixed before the trial court is tomorrow i.e. 11.2.2020 and, therefore, there is no reason for interference in the order impugned.

I have considered the submissions made by learned counsel for the parties and have perused the material available on record.

A bare look at the dates as already noticed, wherein, the order rejecting the prayer for ad interim injunction was passed on 17.6.2019, the petitioner claims to have filed the writ petition before this Court on or around 2.7.2019 and the writ petition came to be rejected on 10.7.2019. The petitioner in fact had applied for copy of the impugned order dated 17.6.2019 on 17.7.2019 which is reflected form Annex.4 and apparently the copy was not delivered to the petitioner, resulting in, his again applying on 22.7.2019 and on delivery of the copy, filed the appeal.

In view of provisions of Section 14 of the Limitation Act and the fact that the writ petition was rejected while granting liberty to the petitioner to file appeal, the period spent before this Court should have been taken into consideration by the trial court and once the period of 8 days is taken into consideration, the appeal filed by the petitioner was well within limitation besides the fact that the period of copying, if the application was filed on 17.7.2019 was also required to be excluded.

In any case, looking to the circumstances of the case, the pedantic approach of

the appellate court, while dealing with the application under Section 5 of the Limitation Act, even otherwise cannot be appreciated.

In view thereof, the writ petition filed by the petitioner is allowed. The order dated 2.8.2019 passed by the appellate court is set aside. The delay in filing the appeal is condoned. The appellate court is directed to deal with the appeal in accordance with law.

It is further observed that the trial court would also be free to deal with the pending application under Order XXXIX Rule 1 & 2 CPC irrespective of pendency of the appeal against rejection of ad interim injunction before the appellate court.