
(1973) 09 RAJ CK 0001
In the Rajasthan High Court
Case No : Civil Special No. 686 of 1972

V.N. Khanna

APPELLANT

Vs

Official Liquidator, Golecha Properties (P) Limited

RESPONDENT

Date of Decision : 08-09-1973

Acts Referred:

Limitation Act, 1963 — Section 5

Citation : (1974) WLN 729

Hon'ble Judges : B.P. Beri, C.J; M.L. Joshi, J

Bench : Division Bench

Judgement

1. This special appeal by Shri V.N. Khanna is directed against the judgment of a learned Single Judge of this Court dated 10.9.1972, where by he dismissed the appeal as barred by time.

2. In order to appreciate the controversy raised in this appeal it is necessary to state the relevant facts. The Official Liquidator Golecha Properties (Private) Ltd., (hereinafter referred as the "Official Liquidator"), invited claims from the creditors of company. In response to the notice the appellant sent his claim on the basis of a Hundi alleged to have been executed by the company in his favour. The original Hundi verified by an Oath Commissioner was sent by the appellant under a registered cover which was received in office of the Official Liquidator on 21.4.1969. The Official Liquidator required the original Hundi for the scrutiny of the claim. He, therefore, by his letter dated 20.2.1971 called upon the appellant to submit the original Hundi which the appellant tried to send to the company by dispatching a letter referring that the original Hundi was enclosed with it. It, however, appears that the original Hundi was not with the letter and the appellant seeks to explain that it was by inadvertence that the Hundi could not be enclosed with the letter although appellant was under a bona fide impression that the same had been enclosed by him. The Official Liquidator, therefore, informed the appellant to submit the original Hundi at Delhi on 16.9.1971. According to the appellant he was not at his place of residence at Lucknow but

was abroad on a Govt. mission, wherefrom he returned only in the month of October, 1971. The appellant states that on his return from abroad he dispatched the original Hundi by registered post on 21.10.1971 which was received in the office of the Official Liquidator on 25.10.1971. On this very date viz. 25.10.1971, the appellant received a intimation of the rejection of his claim on 13.10.1971. The appellant made written representation for reversing the order but the Official Liquidator refused to reconsider it on the ground that he had already rejected it. Being aggrieved the appellant preferred an appeal which was rejected as barred by time, by the learned Single Judge as in his opinion the appellant had not satisfactorily explained the delay of 106 days by which the appeal was barred by time.

3. It is not in dispute that the appeal before the learned Single Judge was presented beyond time. The appellant, however, sought to explain the delay by moving an application for condonation of the delay under Rule 7 of the Company Court Rules read with Section 5 of the Limitation Act setting out reasons in detail as to how he was delayed in presenting the appeal, Principal reasons assigned by appellant were sickness of his wife from mental disease; (ii) his involvement in preparation for the departmental examination and interview; (iii) he came down to Jodhpur on 23-1-1972, consulted the lawyer of that place and had sent the papers relating to appeal to him at Jodhpur which were received by his counsel on 12-2-1971, but unfortunately the papers were eaten away by the rats. He had, therefore, to get the appeal and affidavit again prepared by his counsel who sent them for his signature, which took further time and ultimately the appeal could be presented on 1-3-1971. In support of his contention, appellant submitted certificate of illness of his wife and also examined himself in evidence. The learned Judge while pointing out minor defects in the evidence regarding the sickness of the appellant's wife was inclined to assume that the appellant's wife really suffered from mental illness from 15-7-1971 to 15-1-72 We also do not see any sufficient reason to disbelieve this version of appellants The learned Judge was, however, not satisfied with the explanation as to subsequent delay as he was of the opinion that the delay subsequent to 15-1-1972 on the part of the appellant and his agent was not justified as the appellant and his agent did not show enough vigilance which reflected that the appellant was not serious about the presentation of the appeal. From the perusal of the judgment it appears that the learned Judge was under the impression that the Court was to be satisfied for each day's delay satisfactorily although the learned Judge himself expressed doubt as to the applicability of Section 5 of the Limitation Act. In this view of the matter he did not accept the appellant's explanation and held the appeal barred by time.

4. Rule 7 of the Company Court Rules empowers the Court to extend the time in any case where the time is appointed by the rules or fixed by the Court upon such terms as the justice of the case may require. Admittedly time to file appeal within 21 days is appointed by Rule 161 and therefore appropriate provision applicable to the controversy as to limitation is Rule 7 of the Company Court

Rules. The powers under Rule 7 are very wide and could be exercised if the justice of the case so demanded. It is not the intention of the rule that each day's delay is to be satisfactorily explained as is required u/s 5 of the Limitation Act. The essence of the rule is the dictates of justice. The appellant has been pressing his claim from the very beginning. The Official Liquidator dismissed his claim because the primary evidence, viz. the original Hundi was not produced in time. The appeal could not be presented in time because of the diverse reasons. Could we frustrate the call of justice merely because each day's delay has not been explained? Our answer is in a firm negative in the circumstances of this case. The appellant has stated on oath that he came to Jodhpur on 23rd January 1972 for consulting a lawyer & for making enquiries from the Official Liquidator and consulted a lawyer and left Jodhpur on 25-1-1972 as he had to appear at the interview which was scheduled to be held on 31-1-1972. Mr. B.C. Mehta Advocate has also filed affidavit to the effect that he received the papers from the appellant on 12-2-1972 and the same were kept on his office table but he could not find them till 17-2-1972. Efforts later revealed that the rats had carried the papers to the under ground room and munched them. The learned Single Judge has not specifically rejected the affidavit of Mr. Mehta and having perused it we also see no *jus fiction* to disbelieve it. The learned Single Judge was, however, influenced by the fact there was no valid reason for the appellant to have gone back to Lucknow after coming to Jodhpur on 23.1.72, and likewise there was no justification for Mr. B.C. Mehta to have not exercised vigilance. We cannot blame the appellant if he gave priority to the prospects of his Official promotion in preference to the realization of debt from an insolvent (debtor). Nor can we deny justice to the appellant because his counsel's table was invaded by rats. Mishaps such as these cannot be permitted to defeat justice. The fact remains that the appellants did make the efforts in the direction of presenting the appeal. Powers under Rule 7 have been conferred on the Court for advancing justice. The principal concern of the Court in view of the language of Rule 7 is to see whether the enlargement of time for filing appeal was in the interest of justice. The learned Single Judge has not addressed himself from this angle and adopted the standards of Section 5 of the Limitation Act. The judgment under appeal, therefore, cannot be sustained in law.

5. Ordinarily we would have sent the appeal back to the learned Judge for his decision on the question as to whether the Official Liquidator was right in refusing to scrutinise the appellant's claim but we feel that no useful purpose will be served to send the case back to the learned Single Judge as it will further unnecessarily prolong the proceedings. We have, therefore, examined the matter ourselves and are of the opinion that in the facts and circumstances of the case the Official Liquidator should have scrutinised the case on merits. Accordingly we set aside the judgment of the learned Single Judge and send the case back to the Official Liquidator for scrutiny of the appellant's claim on merits. Costs of the appeal shall abide the result.