
(2015) 08 RAJ CK 0011
In the Rajasthan High Court
Case No : Civil Second Appeal No. 336 of 2012

V.S. Mertiya

APPELLANT

Vs

Jodhana Real Estate Development Company Pvt. Limited

RESPONDENT

Date of Decision : 07-08-2015

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 100
Limitation Act, 1963 — Section 5

Citation : (2015) 08 RAJ CK 0011

Hon'ble Judges : Pratap Krishna Lohra, J

Bench : Single Bench

Advocate : Chaitanya Gehlot, for the Appellant; Vikas Balia, Advocates for the Respondent

Final Decision : Dismissed

Judgement

Pratap Krishna Lohra, J—Legal representatives of appellant-defendant have filed this second appeal under Section 100 CPC to challenge the impugned judgment and decree dated 20th of March, 2006 passed by learned Additional District Judge No. 2, Jodhpur (for, short, "learned lower appellate Court), whereby learned lower appellate Court has affirmed the judgment and decree passed by Additional Civil Judge (Junior Division) Jodhpur (City), Jodhpur dated 18.03.2002.

2. This appeal is filed after delay of 2344 days, therefore, appellant has also moved an application under Section 5 of the Limitation Act for condonation of delay. Averments contained in the application reads as under:-

1. That the impugned judgment and decree was passed by learned appellate Court on 20.3.2006.

2. That it is only in the last of year 2010 one of the appellants, namely, Rajveer Singh came to know about the aforesaid proceedings as after dismissal of first appeal defendant-appellant Shri V.S. Mertiya (father of the appellants) died and the appellants were not known to the facts of the litigation. Shri Rajveer Singh

collected certified copies of judgments as aforesaid but was not aware of the consequence because the lis was affecting only the appellants Anand Singh and Surendra Singh. Further, when the appellant Surendra Singh came to hear the whispers about the demolition steps to be taken at the instance of plaintiff he collected papers from appellant Rajveer Singh.

3. That because of the eldest brother Anand Singh being in service in Indian Airforce and was posted out of station for all the time and the appellants inter-se could not meet and have a dialogue on the matter.

4. That just before three months Shri Anand Singh has been transferred at Jodhpur and when after meeting the appellants tried to enquire about the matter it came to the knowledge that some part of the construction is going to be demolished, which is done, will deprive the appellants from using their property in question. Thus, without wasting any time contacting the counsel are preferring this second appeal before this Hon"ble Court.

5. That the aforesaid delay caused in filing the aforesaid appeal is un-intentional and without any fault on the part of appellants, thus, they crave liberty to request this Hon"ble Court to condone the delay caused in filing this second appeal.

3. Respondent has contested the application by submitting its reply. In the reply, a specific objection is taken by the respondent that the facts averred in the application seeking condonation of delay are absolutely vague, cryptic and unspecific, therefore, such averments cannot be relied upon. It is also submitted in the reply that even date of death of original defendant, V.S. Mertiya, has not been mentioned in the application. In that background, it is pleaded in the reply that when the original defendant has not filed this appeal in time though he was very much aware about the verdict of the appellate Court no indulgence can be granted to his legal representatives on the strength of certain averments which are not inspiring confidence.

4. I have heard learned counsel for the parties and perused the application.

5. There remains no quarrel that while exercising its judicial power and discretion, Court should adopt a liberal approach in construing word "sufficient cause", but liberal construction of the term does not mean that delay is to be condoned for mere askance and, even in cases where negligence and apathy of the litigant is clearly apparent and writ large. The expression "sufficient cause" is receiving a liberal construction so as to advance substantial justice remains unquestionable and the law Courts are construing the same utmost liberally. However, when negligence or inaction on the part of a litigant is clearly visible and there is lack of bona fide on the part of a party delay is not liable to be condoned.

6. It is trite that law of limitation is based on public policy and its precise object is to prevent disturbance or deprivation of what may have been acquired in

equity and justice by long enjoyment or what may have been lost by a party's own inaction, negligence or laches. Therefore, the discretion conferred on the appellate Courts to condone delay may be exercised to further the interest of justice when the party seeking condonation of delay has furnished sufficient cause for the delay. A total inaction or indolence on the part of a litigant cannot persuade a Court to exercise its discretion to condone the delay in favour of a litigant. If such liberal approach is adopted by the law Courts, then it may render law of limitation nugatory and otiose, eventually putting premium over the total inaction and dormancy of a litigant for his legal rights. The averments contained in the application in the totality of the facts and circumstances of the instant case are not at all inspiring confidence so as to persuade this Court to exercise its discretion for condonation of delay. The appellant has shown total callousness and apathy in availing the remedy of appeal by laying this appeal after inordinate delay of 2344 days for which there is no cause much less sufficient cause.

7. It is also worthwhile to note that not only application under Section 5 of Limitation Act is bereft of material particulars about death of Shri V.S. Mertiya, but the application (IA No. 5215/2013), laid on behalf of appellants to waive defect No. 4, is also conspicuously silent about date of death of Shri. V.S. Mertiya. There is no material placed on record to prove the actual date of death of Mr. Mertiya. In that background, Court is constrained to observe that the application for condonation of delay has been drafted cleverly by concealing material facts and as such it is not desirable to rely on such averments.

8. Hon'ble Supreme Court in case of Basawaraj and Others Vs. The Spl. Land Acquisition Officer, AIR 2014 SC 746 : (2013) 13 JT 469 : (2014) 1 RCR(Civil) 603 : (2013) 10 SCALE 391 : (2013) 14 SCC 81 , while construing the expression "sufficient cause" and examining the intent of statute of limitation, has held as under:-

9. Sufficient cause is the cause for which the defendant could not be blamed for his absence. The meaning of the word "sufficient" is "adequate" or "enough", inasmuch as may be necessary to answer the purpose intended. Therefore, the word "sufficient" embraces no more than that which provides a platitude, which when the act done suffices to accomplish the purpose intended in the facts and circumstances existing in a case, duly examined from the viewpoint of a reasonable standard of a cautious man. In this context, "sufficient cause" means that the party should not have acted in a negligent manner or there was a want of bona fide on its part in view of the facts and circumstances of a case or it cannot be alleged that the party has "not acted diligently" or "remained inactive". However, the facts and circumstances of each case must afford sufficient ground to enable the court concerned to exercise discretion for the reason that whenever the court exercises discretion, it has to be exercised judiciously. The applicant must satisfy the court that he was prevented by any "sufficient cause" from prosecuting his case, and unless a satisfactory explanation is furnished, the court should not allow the application for condonation of delay. The court has to

examine whether the mistake is bona fide or was merely a device to cover an ulterior purpose. (See *Manindra Land and Building Corpn. Ltd. v. Bhutnath Banerjee*, *Mata Din v. A. Narayanan*, *Parimal v. Veena* and *Maniben Devraj Shah v. Municipal Corpn. of Brihan Mumbai*.)

10. In *Arjun Singh v. Mohindra Kumar* this Court explained the difference between a "good cause" and a "sufficient cause" and observed that every "sufficient cause" is a good cause and vice versa. However, if any difference exists it can only be that the requirement of good cause is complied with on a lesser degree of proof than that of "sufficient cause".

11. The expression "sufficient cause" should be given a liberal interpretation to ensure that substantial justice is done, but only so long as negligence, inaction or lack of bona fides cannot be imputed to the party concerned, whether or not sufficient cause has been furnished, can be decided on the facts of a particular case and no straitjacket formula is possible. (Vide *Madanlal v. Shyamlal and Ram Nath Sao v. Gobardhan Sao*.)

12. It is a settled legal proposition that law of limitation may harshly affect a particular party but it has to be applied with all its rigour when the statute so prescribes. The court has no power to extend the period of limitation on equitable grounds. "A result flowing from a statutory provision is never an evil. A court has no power to ignore that provision to relieve what it considers a distress resulting from its operation." The statutory provision may cause hardship or inconvenience to a particular party but the court has no choice but to enforce it giving full effect to the same. The legal maxim *dura lex sed lex* which means "the law is hard but it is the law", stands attracted in such a situation. It has consistently been held that, "inconvenience is not" a decisive factor to be considered while interpreting a statute.

13. The statute of limitation is founded on public policy, its aim being to secure peace in the community, to suppress fraud and perjury, to quicken diligence and to prevent oppression. It seeks to bury all acts of the past which have not been agitated unexplainably and have from lapse of time become stale. According to *Halsbury's Laws of England*, Vol. 28, p. 266:

"605. Policy of the Limitation Acts.-The courts have expressed at least three differing reasons supporting the existence of statutes of limitations namely, (1) that long dormant claims have more of cruelty than justice in them, (2) that a defendant might have lost the evidence to disprove a stale claim, and (3) that persons with good causes of actions should pursue them with reasonable diligence."

An unlimited limitation would lead to a sense of insecurity and uncertainty, and therefore, limitation prevents disturbance or deprivation of what may have been acquired in equity and justice by long enjoyment or what may have been lost by a party's own inaction, negligence or laches. (See *Popat and Kotecha Property v. SBI Staff Assn.*, *Rajender Singh v. Santa Singh* and *Pundlik Jalam Patil v. Jalgaon*

Medium Project.)

9. While construing Section 5 of the Limitation Act, it is relevant to bear in mind two important considerations. The first consideration is that the expiration of period of limitation prescribed for laying an appeal gives rise a right in favour of the decree holder to treat the decree as binding between parties. In other words, on expiry of prescribed period of limitation the decree holder acquires a benefit under law of limitation to construe the decree as beyond challenge, and this legal right which has accrued to the decree holder by lapse of time should not be lightly disturbed. The other consideration, which is to be kept in mind by the Court is that if sufficient cause for excusing delay is shown by the party, Court in its discretion may condone the delay. It is needless to emphasize here that even after sufficient cause has been shown by a party, it 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 of the Limitation Act. In the instant appeal delay is of almost six and half years for which there is no plausible explanation and, as such, the cause shown for condonation of delay cannot be construed as good and sufficient cause. Thus, the application under Section 5 of the Act deserves rejection.

10. Moreover, in the instant case, there is concurrent finding of fact, which is based on proper appreciation of evidence on record, and even on delving deep into the matter, I am unable to lay my hands on any substantial question of law involved in the matter requiring adjudication in exercise of second appellate jurisdiction.

11. Therefore, the application under Section 5 of the Limitation Act is, hereby, rejected. In view of rejection of application under Section 5 of Limitation Act, appeal is also dismissed.