

Devilal Vs. Kantabai

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Court : Madhya Pradesh

Decided On : Apr-07-2000

Reported in : II(2000)DMC238

Judge : A.M. Sapre, J.

Acts : [Limitation Act, 1963](#) - Sections 5

Appeal No. : M.A. No. 115 of 2000

Appellant : Devilal

Respondent : Kantabai

Advocate for Def. : None

Advocate for Pet/Ap. : C.S. Joshi, Adv.

Disposition : Appeal dismissed

Judgement :

ORDER

A.M. Sapre, J.

1. Heard on LA. No. 1171/2000.

2. This is an application made by appellant under Section 5 of Limitation Act seeking condonation of delay in filing appeal.

3. Appellant is defendant in a suit filed by the respondent. The suit was for claiming maintenance by the wife against husband (appellant herein). This was decreed by the impugned judgment and decree. The learned Trial Court fixed a monthly sum of Rs. 400/- to be paid to plaintiff by the appellant. It is against this judgment and decree that the appellant has felt aggrieved and filed this appeal.

4. According to appellant the appeal is delayed by 61 days. The ground for condonation of delay as mentioned in the application is that the judgment was delivered on 30.10.1999 whereas the decree was drawn on 2.11.1999. This according to appellant has caused confusion leading in delay. The other ground is of his ailment.

5. Having heard the learned Counsel for the appellant and examined the record of the case, I find that both the grounds urged by the appellant have no substance whatsoever. So far as the ground relating to date of judgment and decree is concerned, in my opinion, it does not constitute any cause at all much less sufficient one. I fail to understand as to how and in what manner the two dates have caused or give some rise of confusion. The judgment was delivered on 30.10.1999 whereas decree was signed on 2.11.1999. Indeed perusal of original record shows that even the decree was drawn on the same day (30.10.1999) and the same was brought to the notice of both Counsel appearing for the parties, who got the same noted by their signatures. Under these circumstances to say that it caused delay in filing appeal and that too of 61 days has no basis at all. Coming to the second ground of ailment of appellant, the certificate of doctor filed in support is totally false one. It is apparent by only reading it. It does not mention as to by which ailment, the appellant was down then of what period. The appellant has just procured the said certificate for the sake of production. It has no sanctity.

6. The appellant has not been able to satisfy the Court by showing any cause as to why could not file the appeal in time and why it resulted in delay of 61 days. The appellant claims to be a petition writer. He is in the knowledge of legal provisions.

7. Application being devoid of any cause, it is dismissed. As a consequence, the appeal is also dismissed as having preferred beyond the period of limitation.

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