

Asharam and ors. Vs. Smt. Gangabai and ors.

Asharam and ors. Vs. Smt. Gangabai and ors.

SooperKanoon Citation : sooperkanoon.com/509837

Court : Madhya Pradesh

Decided On : Nov-10-2005

Reported in : 2006(2)MPHT195; 2006(1)MPLJ619

Judge : U.C. Maheshwari, J.

Acts : [Limitation Act, 1963](#) - Sections 5; Code of Civil Procedure (CPC) - Sections 100

Appeal No. : Second Appeal No. 462/1992

Appellant : Asharam and ors.

Respondent : Smt. Gangabai and ors.

Advocate for Def. : Sudha Pandit and ;Amanullah Usmani, Advs. for Respondent Nos. 1 and 2 and ;Sudesh Verma, Govt. Adv. for Respondent No. 3

Advocate for Pet/Ap. : A.B. Khan, Adv.

Disposition : Appeal allowed

Judgement :

U.C. Maheshwari, J.

1. Being aggrieved by the judgment and decree dated 5-9-1992, passed by the First Additional District Judge to the Court of District Judge, Raisen in M.J.C. No. 10/91, by which an appeal filed by the appellants/defendants was dismissed by dismissing the application filed under Section 5 of the Limitation Act for condonation of the delay in filing the appeal. Resultantly, the judgment and decree dated 3-4-1991, passed by Civil Judge, Class-II, Raisen in Civil Original Suit No. 54-A/95 has been upheld in favour of the respondent Nos. 1 and 2, appellants have preferred this appeal under Section 100, Civil Procedure Code.

2. Facts giving rise to this appeal are that the predecessor of the respondent Nos. 1 and 2 has filed a Civil Suit for perpetual injunction against the present appellants and also by impleading the respondent No. 3 as formal defendant. Such suit was decreed by the Trial Court. Subsequent to it, the appeal was not preferred within the limitation the same was preferred after delay of more than two months alongwith an application under Section 5 of the Limitation Act for condoning the delay in filing the same. That application was also supported by an affidavit. As per averments of it, the appellant No. 4 Ram Gopal was looking after the affairs of the litigation. Lastly he was given assurance by the Advocate on 16-2-91 that their presence are not required thus they did not come to the Court, Meanwhile, the case was decided by the Trial Court against them but appellants were not informed by the Counsel, on dated 20-6-1991, when respondent Nos. 1 and 2 alongwith some other persons had come to the disputed land for cultivating then they came to know about the said judgment and decree. Immediately they rushed to the Advocate and on 21-6-1991 an application for certified copies of the judgment and decree was filed and the copy of judgment was delivered on 28-6-1991

while the copy of decree was delivered on 10-7-1991 subsequent to it on 11-7-1991 appeal was preferred in the District Court. With this explanation and sufficient cause they had prayed for condonation of the delay.

3. By filing the reply on behalf of respondent Nos. 1 and 2, the averments made by the appellants were denied. It is also stated that no sufficient cause is made out and whatever cause has been mentioned that is not bonafide and looking to gross negligence on the part of the appellants such delay could not be condoned and prayed for dismissal of the application as well as the appeal as barred by time.

4. On consideration the application of the appellants was dismissed resultantly appeal was also dismissed as barred by time hence this appeal.

5. This appeal was admitted vide order dated 20-7-1993 on the following substantial question of law :-

Whether the Lower Appellate Court is justified in refusing to condone the delay in filing the appeal

6. The learned Counsel for appellants has submitted that all the appellants are the illiterate villagers and they do not know the technicalities of law. They remained under the assurance of the Counsel that material information in respect of the case would be given by him but no information was received by them. Firstly on dated 26-9-1991 they came to know from the respondent Nos. 1 and 2 regarding disposal of the case then immediately appropriate steps to file the regular first appeal was taken and appeal was preferred on 11-7-1991. He further submits that the justice should not be lost on technicalities and reasons as assigned by the appellants in application those are not only bonafide but were sufficient to condone the delay but learned Appellate Court has negated the same. In alternate, suit is submitted that condonation application be considered with justice oriented approach to decide the appeal on merits and for that purpose if it is necessary then respondents may be compensated by imposing a reasonable cost over the appellants. In support of this case he cited some decided cases of the Apex Court.

7. While, other hand, learned Counsel for the respondents submitted that whatsoever cause mentioned by the appellants in the application that was not prima facie supported by an affidavit of the concerning Advocate mere on the basis of affidavit of the party the contention could not be relied. He further submits that appellants have not filed the appeal within the prescribed limitation under the concerning provision and for subsequent period they have not shown any sufficient cause, in the absence of the same, the gross negligence on the part of the appellants are apparent. Thus, the right in respect of the limitation which was acquired by respondents could not be disturbed on flimsy grounds as stated by the appellant. With this back ground he submitted that learned Appellate Court has not committed any error in dismissing the application and consequently the appeal. Thus, this appeal be also dismissed.

8. In view of the aforesaid submissions of the parties, on perusing the averments of the application and reply and there supporting affidavits and looking to the social background of the appellants as they are not only illiterate but villagers also besides this they did not aware about the technicalities of the proceedings although ignorance of the law is not excuse for any one but some times to do justice in between the parties it requires some liberal construction with justice oriented approach.

9. The aforesaid question was answered by the Apex Court in the matter of M.K Prasad v. P. Arumugam reported in : AIR2001SC2497 , in which it was held as under :-

10. In the instant case, the appellant tried to explain the delay in filing the application for setting aside the ex parte decree as is evident from his application filed under Section 5 of the Limitation Act accompanied by his own affidavit. Even though the appellant appears not to be as vigilant as he ought to have been, yet his conduct does not, on the whole warrant to castigate him as an irresponsible litigant. He should have been more vigilant but his failure to adopt such extra vigilance should not have been made a ground for ousting him from the litigation with respect to the property, concededly to be valuable while deciding the application for setting aside the ex parte decree, the Court should have kept in mind judgment impugned, the extent of

the property involved and the stake of the parties. We are of the opinion that the inconvenience caused to a respondent for the delay on account of the appellant being absent from the Court in this case can be compensated by awarding appropriate the exemplary costs. In the interest of justice and under the peculiar circumstances of the case, we set aside the order impugned and condone the delay in filing the application for setting aside the exparte decree. To avoid further delay, we have examined the merits of the main application and feel that sufficient grounds exist for setting aside the exparte decree as well.

In the aforesaid case, the Apex Court has come to the conclusion that the concerning appellants were not vigilant but their conduct was not on the whole warranted to castigate them as irresponsible litigant. It was said that he should have been more vigilant but on failure to adopt such extra vigilant was not found as a ground for ousting them from the litigation with respect to the property concededly to be valuable. It was also said that while deciding such application Court should have kept in mind the judgment impugned and the extent of the property involved and the stake of the parties. In view of this, if the case at hand is examined, then all these things are available in it with slight differences. Thus considering all the circumstances with justice oriented approach I answer the aforesaid question in affirmative. Consequently, this appeal is allowed.

10. Learned Counsel for the respondents has cited a decision of the Apex Court in the matter of The State of West Bengal v. The Administrator, Howrah Municipality and Ors. reported in : [1972]2SCR874a , the said case also states about liberal construction of provision of Section 5 of the Limitation Act so as to advance substantial justice to a party.

11. Thus, this appeal is allowed. The impugned order/judgment and decree are set aside and the application filed by the appellants before the First Appellate Court under Section 5 of the Limitation Act is allowed. Entire delay in filing the appeal is hereby condoned but subject to payment of Rs. 1,000/- (Rupees one thousand only) as cost to the respondents and the case is remitted back to the Subordinate Appellate Court to decide afresh on merits as regular appeal. It is expected from the Appellate Court that the appeal shall be decided finally on or before 31-3-2006.

10. In the facts and circumstances of the case, there shall be no orders as to costs.

Decree be drawn-up accordingly.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com