Brij Pal Vs. State

Brij Pal Vs. State

SooperKanoon Citation : sooperkanoon.com/686245

Court : Delhi

Decided On : Sep-23-1988

Reported in : 36(1988)DLT335; 1988(15)DRJ411

Judge : Charanjit Talwar and; M.K. Chawla, JJ.

Acts : Indian Penal Code (IPC), 1860 - Sections 302

Appeal No. : Criminal Appeal No. 113 of 1985

Appellant : Brij Pal

Respondent : State

Judgement :

D.P. Wadhwa, J.

(1) This second appeal is by the owner landlady of certain premises in Chawri Bazar, Delhi.

(2) The landlady filed a suit for possession against legal representatives of her tenant. Kedar Nath was the tenant. He died leaving behind his daughter-in-law and grand children (some of them minors), who are the defendants, as his legal heirs. The wife of Kedar Nath and his son Nathu Ram pre-deceased him. He had no other legal heir. The suit was filed on the basis that the defendants could not inherit the tenancy as Kedar Nath was a statutory tenant. The suit which was filed

on 2-3-1976 was dismissed on 8-10-1982. First appeal against the judgment and decree was filed on 2-6-1973, almost two months after the period of limitation. The appeal was dismissed being barred by limitation by the impugned order. I will note that earlier also the petitioner had filed a suit against the respondents which was dismissed as far back as in 1975 wherein the court held that the respondents were the tenants of the petitioner in respect of the premises in question. The appeal filed by the petitioner against that judgment was also dismissed.

(3) Mr. Chibber states that in the course of the proceedings before the trial court on a certain interlocutory order the landlady filed a petition under Article 227 of the Constitution of India in this court. The impugned order then was that the plaintiff was not given opportunity to cross-examine the defendants sole witness. Earlier stay of further proceedings was granted by this court but it was vacated on 8-9-1982. Mr, Chibber says that when that petition was pending in this court the landlady was under the impression that limitation will not run till the petition was disposed of. That petition was ultimately dismissed on 30-11-1982. It was only thereafter that an application for grant of certified copy of the impugned judgment and decree of the trial court was made. He, thereforee, says that there was sufficient cause for condoning the delay and the lower appellate court was in error in dismissing the appeal as barred by limitation.

(4) In support of his contention Mr. Chibber referred to a decision of the Supreme Court in Collector. Land Acquisition, Anantnag & Am. v. Mst. Katji & Ors, : (1987)ILLJ500SC for the proposition that court should liberally construe the provisions of Section 5 of the Limitation Act, 1963 so as to do substantial justice between the parties. In this case the Supreme Court said that liberal approach should be adopted by the Courts and the endeavor should be to dispose of the matters on merits. It also held that the expression 'sufficient cause' as appearing in Section 5 of the Limitation Act, 1963 was adequately elastic to apply the law in a meaningful manner which subserves the ends of justice. I, however, do not think that this judgment can be used as a magic wand to be applied in all cases and in all situations. Even in the case before the Supreme Court the court held that it was satisfied that sufficient cause existed for the delay. One must not forget also the principles underlying the law of limitation and the right accruing to the opposite

party for not filing the appeal within time. The court, thereforee, has to be satisfied if the appellant or the applicant as the case may be had sufficient cause for not preferring the appeal or making the application within the period prescribed. Though, the court should adopt a liberal approach in examining the circumstances which prevented the appellant in not preferring the appeal within time.

(6) In the present case the lower appellate court examined the circumstances to come to the conclusion that there was no sufficient cause in not filing the appeal within the period prescribed. I too find that no sufficient cause has been made out on the facts of the present case for condoning the delay. No substantial question for law, thereforee, arises in this appeal Dismissed.