

Laxmi Devi Vs. Meena Mishra

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Court : Rajasthan

Decided On : Jan-06-1988

Reported in : 1988WLN(UC)157

Judge : Mohini Kapoor, J.

Appeal No. : S.B. Civil First Appeal No. 167 of 1987

Appellant : Laxmi Devi

Respondent : Meena Mishra

Disposition : Appeal allowed

Judgement :

Mohini Kapoor, J.

1. At this stage it is to be decided whether the delay in preferring this appeal can be condoned and whether the appellant has been able to make out sufficient cause for condoning the delay. A decree for specific performance of contract was passed against the appellant on 18-12-1986 by the Addl. District Judge No. 1 Bharatpur, by which the defendant respondent was to deposit a sum of Rs. 2,000/- within one month, upon which the plaintiff-appellant was to execute a registered sale-deed. It was also ordered that in case the defendant appellant failed to execute a sale deed the plaintiff respondent could apply before the Court who

would execute the same on behalf of the defendant. This appeal was preferred on 13-11-1987. The appellant applied for a copy of judgment and decree on 9-10-1987 and the same was delivered to him on 14-10-1987.

2. The learned Counsel for the appellant has in support of this application under Section 5 of the Limitation Act, contended that it was under the mistaken advice of a lawyer that this appeal was not preferred within limitation. According to the appellant's affidavit, she was advised that a final decree would be prepared and she could prefer an appeal against a final decree. The Advocate, who gave this advice to her has also filed his affidavit and his name is Rajendra Kumar. He has deposed that the appellant came to him on 24-12-1986, for purposes of seeking advice to prefer an appeal against the judgment dated 18-12-1986 and he after looking into the provisions of Order 34 CPC advised her that she can file an appeal after a final decree is prepared in the execution proceedings.

3. In Collector, Land Acquisition Anantnag and Anr. v. Mst. Katiji and Ors. : (1987)ILLJ500SC , it has been observed that the expression 'sufficient cause' employed by the legislature is adequately elastic to enable the courts to apply the law in a meaningful manner which subserves the ends of justice that being the life-purpose for the existence of the institution of Courts. Emphasis was laid on conveying the message that the Courts should take a liberal approach and the following principles were laid down:

[1] Ordinarily a litigant does not stand to benefit by lodging an appeal late;

[2] Refusing to condone delay can result in a meritorious matter being thrown out at the very threshold and cause of justice being defeated. As against this when delay is condoned the highest that can happen is that a cause would be decided on merits after hearing the parties;

[3] 'Every day's delay must be explained' does not mean that a pendentic approach should be made. Why not every hours' delay, every second's delay? The doctrine must be applied in a rational common sense pragmatic manner;

[4] When substantial justice and technical considerations are pitted against each other, cause of substantial justice deserves to be preferred for the other side cannot claim to have vested right in injustice being done because of non-deliberate delay;

[5] There is no presumption that delay is occasioned deliberately, or on account of culpable negligence, or on account of malafides. A litigant does not stand to benefit by resorting to delay. In fact he runs a serious risk;

[6] It must be grasped that judiciary is respected not on account of its power to realize injustice on technical grounds but because it is capable of removing injustice and is expected to do so.

4. Making this decision as the basis of his contentions, it has been contended that a mistaken advice given by a legal practitioner which results in delay in preferring an appeal, amounts to sufficient cause under Section 5 of the Limitation Act and the delay on account of this reason should be condoned.

5. In *Smt. Sandhya Rani Sarkar v. Smt. Sudha Rani Debi and Ors.* : [1978]2SCR839 , the facts were similar to the present case. A decree for specific performance of contract for sale of immovable property was passed by the trial court and an appeal against the same was preferred after six years. In the application under Section 5 of the Limitation Act submitted with the appeal for condoning the delay the appellant took the plea that a decree passed in a case of specific performance was a preliminary decree and the appellant waited for the final decree to be passed before preferring an appeal, and as such for this reason, it could be said that she was prevented by a sufficient cause from preferring the appeal and the delay should be condoned. The trial court held that a decree in a suit for specific performance was not a preliminary decree and this was also upheld by the Supreme Court. However, while examining the sufficient cause for which the appellant was prevented from preferring an appeal within time was examined and the High Court exercised its discretion in favour of the appellant by condoning the delay in the facts and circumstances of the case. The belief of the appellant that the decree was a preliminary decree and a final decree would be made only after deposit was made by the plaintiff purchaser, was taken to be

sufficient cause as in case the plaintiff failed to deposit the amount the suit would stand dismissed and in that case there was no necessity for the appellant to prefer that appeal.

6. In *State of Orissa and Anr. v. Govind Chaudhury* : AIR1972 Ori76 it has been held that if the delay in filing an appeal is on the erroneous but bona fide legal opinion, then the condonation of delay can be granted.

7. In the case of *State of West Bengal v. The Administrator Howrah Municipality and Ors.* : [1972]2SCR874a , the expression 'sufficient cause' in Section 5 of the Act has been explained and it has been said that it should receive a liberal construction so as to advance substantial justice when no negligence or inaction or want of bonafide, is imputable to a party. Pursuing other remedy than appeal on wrong advice by counsel was held to be sufficient cause.

8. On the other hand, learned Counsel for the respondent has first of all contended that under Section 97 CPC there is specific provision which provides for preferring appeals against preliminary decrees and if the appeal is not preferred against the preliminary decree, then the same cannot be disputed in an appeal against a final decree. Referring to Order 20 Rule 10A also it is contended that a decree for specific performance of contract has to specify the period within which the payment is to be made and does not provide for passing a preliminary decree first which is to be followed by a final decree. He has placed reliance upon *Badrinarain v. Chandanmal* , in which it has been held that every wrong advice given by the counsel will not amount to a sufficient cause entitling the appellant to claim indulgence under Section 5 of the Limitation Act. It will amount to a sufficient cause when the advice is given bona fide but if it is due to the negligence' or gross want of legal skill on the part of the counsel, the mistake cannot be held to be a bona fide mistake. In this case the appeal was dismissed as barred by time on the ground that the deficiency in court fee stamp was made up after the expiry of period of limitation. The appeal had been preferred without any stamps on the ground that the party was entitled to a refund of the court fee on an earlier appeal, in which the appellate court had remanded the matter to the trial court. In dealing with this situation, it was observed that the counsel did not carefully, peruse the

provisions of Section 13 Court Fee Act but acted merely on the vague idea, he had about the provision of law.

9. After considering the contentions of both the parties, it can be said that a decree in a suit for specific performance, cannot be said to be a preliminary decree so as to say that this decision could be challenged only after the passing of a final decree. The question to be seen is whether in the circumstances of the case, it could be said that in acting on the advice given by the Advocate, the appellant was acting in a bona fide manner or not. In the present circumstances, it can be said that by preferring the appellate the appellant was not getting any benefit out of it. In fact the execution proceedings against her had started and she was to be dispossessed from the property. In this case the counsel who advised the appellant has given his own affidavit, which is an unusually sporting gesture on his part because it is not every day that legal advisers admit their own mistakes. It can be said that the appellant was advised as has been stated by her. She being an illiterate woman, could not study the matter herself but she had to rely on the advice given to her. Courts have to take a justice oriented approach and not proceed in a manner so as to deprive the parties of a right of hearing on merits on account of technical grounds. When the appellant cannot be attributed with acting in a manner, which could not be said to be bonafide then the circumstances, which have been disclosed, can be said to be sufficient for condoning the delay in preferring the appeal. It is not every mistaken advise of an Advocate, which can become a ground for condoning the delay but with the change in approach of the Courts and the circumstances in which the advice was given, this can be said to be a fit case where the delay in preferring the appeal has been due to a sufficient cause which deserves to be condoned. The application under Section 5 of the Limitation Act is accepted and the delay in preferring the appeal is condoned. The appeal is admitted for hearing. Call for the record. A stay order has been passed earlier, which is supposed by Shri Soral, This application may be listed for orders.