

Rameshwar and ors. Vs. Smt. Manjula Chauhan and anr.

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Court : Rajasthan

Decided On : Jul-21-2000

Reported in : 2000(4)WLC765; 2001(1)WLN524

Judge : Arun Madan, J.

Appeal No. : S.B. Civil Revision Petition No. 476 of 2000

Appellant : Rameshwar and ors.

Respondent : Smt. Manjula Chauhan and anr.

Advocate for Pet/Ap. : Mr. Virendra Agrawal

Disposition : Petition dismissed

Judgement :

Arun Madan, J.

1. The short point which arises for consideration in this revision petition is as to whether in the light of Section 12(2) of the Limitation Act where in a given case there is delay of 10 days in presenting the appeal against the interim order for fixation of interim rent under Section 13(3) of the Rajasthan Premises (Control of Rent and Eviction) Act, 1950 passed by the trial Court could such delay have been condoned by the Appellate Court on the assertions of the petitioners?

2. Mr. Virendra Agrawal, learned Counsel for the petitioners has contended that eviction petition was filed against the defendants (petitioners) on the ground of default in payment of rent, subletting, nuisance and non-user of the premises in the Court of Additional Civil Judge (Junior Division) (West), Jaipur which was registered as Civil Suit No. 536/1993 by the respondents. The suit was contested by the petitioners by filing the written statement. There was a dispute regarding rate of rent. The trial Court vide its order dated 2.6.1999 had determined the provisional rent @ Rs. 200/- per month and directed the petitioners to make the payment of Rs. 26460/- within 15 days.

3. Against the aforesaid order of the trial Court, the petitioners preferred an appeal before the learned District Judge, Jaipur City, Jaipur which was assigned to ADJ No. 2, Jaipur City, Jaipur and the said Appellate Court vide its order dated 11.4.2000 (impugned) dismissed the appeal holding that the petitioners are not entitled to the benefit of Section 12(2) of the Limitation Act since 30 days period of limitation expired on 3.7.1999 while Summer Vacation had been over on 1.7.1999 on which date the application for certified copy should have been filed i.e. on the opening day after vacations, whereas appeal against order dated 2.6.1999 was filed on 13.7.1999 thereby it had become time barred by 10 days.

4. Application under Section 5 of the Limitation Act was also filed by the petitioners for condoning the delay in presenting the appeal which was rejected by the Appellate Court vide its order dated 11.4.2000 as aforesaid. Hence, the petitioners have come up by way of this revision petition.

5. In para 4 of the memo of revision petition, grounds taken by the petitioners for condonation of appeal are thus:

It is pertinent to mention here that 2.6.1999 was the (last working day of Civil Courts and Civil Court was closed from 3.6.1999 to 30.6.1999 and court re-opened on 1.7.1999 and as such the petitioners having no time for filing application for certified copy of the order dated 2.6.1999 till 30.6.1999 and application was moved on 3.7.1999 and certified copy of order was received by them only on 8.7.1999 and the appeal against the order dated 2.6.1999 was filed before the District Judge, Jaipur City on 13.7.1999 which was registered in the Court of Additional

District Judge No. 2, Jaipur City as Misc. Civil Appeal No. 32/1999 (Rameshwar and Ors. v. Smt. Manjula Chauhan and Anr.).

6. At the admission stage, I have heard the learned Counsel for the petitioners and also perused the impugned order of the appellate Court as well as the ratio of the decisions cited at the bar by the learned Counsel for the petitioners. The delay in presenting the appeal is of 10 days.

7. Having considered the contentions of the learned Counsel for the petitioner and the reasons assigned by the appellate Court, it is not in dispute that the appeal was filed before the lower appellate Court on 13.7.1999. Admittedly, impugned order challenged in appeal was passed by the trial Court on 2.6.1999 when Summer Vacations did not commence but it commenced on 3.6.1999 and had been over on 30.6.1999. Hence, the application should have been filed on 1.7.1999 being the opening day. Further, admittedly certified copy of order dated 2.6.1999 was neither applied for on the same day i.e. 2.6.1999 nor on the opening day after vacation was over, i.e. 1.7.1999 but was applied for by presenting application for certified copy on 3.7.1999. Section 12(2) of the Limitation Act, 1963 provides as under:

12. Exclusion of time in legal proceedings

(2) In computing the period of limitation for an appeal or an application for leave to appeal or for revision or for review of a judgment, the day on which the judgment complained of was pronounced and the time requisite for obtaining a copy of the decree, sentence or order appealed from or sought to be reviewed shall be excluded.

8. Thus, in view of the provisions of Section 12(2) (supra), the petitioners cannot be extended and are not entitled to the benefit of exclusion of time taken in preparing and supplying certified copy of the impugned order, because the certified copy was applied for on 3.7.1999 not only after expiry of 30 days period of limitation but also the Summer Vacations had already been over on 1.7.1999 and that such benefit of Section 12(2) (supra) could have been extended only if the certified copy was applied for on opening day of the Courts after vacation i.e. on

1.7.1999, which the petitioners failed to do so in the instant case. Therefore, in my considered view the appellate Court has rightly held that the petitioners are not entitled to the benefit of Section 12(2) of the Limitation Act. It placed reliance of the decisions in Guman and Ors. v. Laxman and Anr. 1961 ILR (Raj.) 913, and Puttu Lal v. Bhagwan Dass and Ors. AIR 1938 All 106.

9. In Guman and Ors. v. Laxman and Anr. (supra), this Court has observed thus:

On a contention that the appellants were entitled to take advantage of the period of vacations as they could not apply for copies during this period, it was held, that under Section 12(2) of the Limitation Act, time requisite for obtaining a copy cannot refer to any period antecedent to the appellants' filing an application for copy. (I.L.R. (1952) 2 Raj. 121, followed). Had the appellants applied for copies on the day when the civil courts reopened, there was something to be said in their favour, but they failed to do so.

10. In Puttu Lal v. Bhagwan Dass and Ors. (supra), the Apex Court observed as under:

Where a judgment is delivered on the last working day before vacation, and the application for copies of judgment and decree is not made on the opening day after the vacation but later on and the period of limitation for filing appeal has expired during the vacation, such application does not extend the period of limitation under Section 12(2). It is only in case the application for copy is made on the opening day that Section 12(2) can be applied.

11. Once the benefit of Section 12(2) is not extended to the petitioners, then the appeal since having been filed before the appellate Court on 13.7.1999 which was barred by 10 days instead of 6 days as on incorrect calculation as so contended by the petitioners, there is no scope for extending the benefit for condonation of delay under the Statute and hence rightly held not entitled to condonation of delay.

12. As regards assertions for the cause of the delay in filing the appeal, the lower appellate Court found them not sufficient because the petitioners failed to produce any affidavit of the concerned advocate or his clerk who had filed the appeal in

support of his case for condonation of the delay, at whose instance the delay had allegedly occasioned and he further failed to explain the same by producing any cogent evidence as to the name of petitioners' uncle who had allegedly died at Delhi, and as to date of uncle's death. Thus, in my considered view, since sufficient cause for the delay has not shown or explained on record, the lower appellate Court has rightly held the cause for delay as not sufficient to condone. The delay has not satisfactorily been explained and the cause was rightly held to be fabricated. Thus, the appeal was totally barred by ten days with no sufficient cause being satisfactorily explained on record.

13. Hence, in my view in view of above stated position, the conclusions drawn by the appellate Court for holding the appeal as time barred do not suffer from incongruity, perversity, illegality or material irregularity nor they can be described as having been arrived at in excess of jurisdiction of the appellate Court. Thus, I do not find any Justification to interfere with the impugned order dated 11.4.2000 of the appellate Court dismissing the appeal in exercise of revisional jurisdiction under Section 115 CPC. Even on merits, I do not find any case for interference with the order of the lower court for fixation of the provisional rent against which time barred appeal was filed before the appellate Court.

14. As a result of the discussion made above, this civil revision petition being devoid of any merit is hereby dismissed in limine. The impugned order dated 11.4.2000 of the appellate Court in Sivil Misc. Appeal No. 32/1999 holding the appeal as time barred, is upheld. Since the revision petition arises out of suit for ejection which is pending since 1993, the trial Court is directed to expeditiously decide the suit, itself, but not beyond three months from the receipt of this order. A copy of this order be sent to the trial Court forthwith.