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SA-263-2015

IN THE HIGH COURT OF MADHYA PRADESH
AT GWALIOR

BEFORE

HON'BLE SHRI JUSTICE HIRDESH

ON THE 17th OF JULY, 2025SECOND APPEAL No. 263 of 2015*ABDUL RASID**Versus**SHAHJAHAN BEGUM*

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Appearance:

Shri Rohit Bansal - Advocate for the appellant.

None for the respondent.

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ORDER

Heard on I.A. No. 3966/2015, an application under Section 5 of the Limitation Act for condonation of delay in filing this Second Appeal.

2. As per office note, there is a delay of 3158 days in filing this appeal.

3. The instant second appeal under Section 100 of CPC filed by the appellant-plaintiff challenging the judgment and decree dated 23rd of September, 2006 passed by District Judge, Shivpuri in Civil Suit No. 52-A/2006, confirming the judgement and decree dated 09.05.2006 passed by the IInd Civil Judge, Class-II, Shivpuri in Civil Suit No.11-A of 2006, whereby suit filed by the plaintiff-appellant has been dismissed.

4. It is contended on behalf of appellant- plaintiff that after dismissal of his suit by the trial Court, he filed a civil suit before the First Appellate Court which was dismissed on 23.09.2006, against which the present second



appeal was filed on 17.08.2015. It is contended that earlier Shri M.D. Goyal- Advocate assured him that he will manage to get his second appeal filed and got signed some documents from him for the purpose of filing of same. Unfortunately, Shri M.D. Goyal died in the month of June, 2007 and after long period of time, when he did not receive any information about filing of second appeal, then in the month of July, 2015, he contacted to counsel Shri Rahul Dandotiya of Shivpuri about filing of of this appeal. After applying certified copy of the impugned judgement and decree passed by the Courts below and which were delivered by him on 11th of August, 2015 and 12th of August, 2015, therefore, delay has been caused. Hence, a liberal approach may be adopted in his favour for condoning the delay in filing this appeal.

5. Heard learned Counsel for appellant.

6. The averments made in the application cannot be taken to be explanation, much less plausible explanation for condonation of such an inordinate delay of 3158 days.

7. Law as regards scope and jurisdiction of the Court in the matter of condonation of delay under section 5 of the Limitation Act is well settled by the Hon'ble Apex Court and the various High Courts.

8. In the case of **Ramlal Vs. Rewa Coalfields Ltd. AIR 1962 SC 361** , the Hon'ble Supreme Court in para 7 has held as under:-

“7. In construing Section 5 (of the Limitation Act) it is relevant to bear in mind two important considerations. The first consideration is that the expiration of the period of limitation prescribed for making an appeal gives rise to a right in favour of the decree-holder to treat the decree as binding between the parties. In other words, when the period of limitation prescribed has expired the decree- holder has obtained a



benefit under the law of limitation to treat the decree as beyond challenge, and this legal right which has accrued to the decree-holder by lapse of time should not be light-heartedly disturbed. The other consideration which cannot be ignored is that if sufficient cause for excusing delay is shown discretion is given to the court to condone delay and admit the appeal. This discretion has been deliberately conferred on the court in order that judicial power and discretion in that behalf should be exercised to advance substantial justice.”

9. The Hon'ble Supreme Court in the case of **P.K.Ramachandran Vs. State of Kerala**, (1997) 7 SCC 556, has held in para 6 as under:-

“6. Law of limitation may harshly affect a particular party but it has to be applied with all its rigour when the statute so prescribes and the courts have no power to extend the period of limitation on equitable grounds.”

10. As regards meaning, scope and rationale of the law of limitation, the Hon'ble Apex Court in the case of **Pundlik Jalam Patil (Dead) by Lrs., Vs. Executive Engineer, Jalgaon Medium Project and another**, (2008) 17 SCC 448 has held as under:

“26. Basically the laws of Limitation are founded on public policy. In Halsbury's Laws of England, 4th Ed., Vol.28, p.266, para 605, the policy of the Limitation Acts is laid down as follows:

“605. Policy of the Limitation Acts.- The courts have expressed at least three different reasons supporting the existence of statutes of limitation, namely, (i) that long dormant claims have more of cruelty than justice in them, (ii) that a defendant might have lost the evidence to dispute the stated claim, (iii) that persons with good causes of actions should pursue them with reasonable diligence.”

27. Statutes of limitation are sometimes described as ‘statutes of peace’. An unlimited and perpetual threat of limitation creates insecurity and uncertainty; some kind of limitation is essential for public order.

*This court in **Rajender Singh and others vs. Santa Singh and others** [(1973) 2 SCC 705] has observed : (SCC p.712, para 18)*

“18. The object of law of Limitation is to prevent



disturbance and deprivation of what may have been acquired in equity and justice by long enjoyment or what may have been lost by a party's own inaction, negligence or laches”.

28. *In Motichand vs. Munshi [AIR 1970 SC 898], this court observed that this principle is based on the maxim “interest reipublicae ut sit finis litium, that is, the interest of the State requires that there should be end to litigation but at the same time law of Limitation are a means to ensuring private justice suppressing fraud and perjury, quickening diligence and preventing oppression.*

29. *It needs no restatement at our hands that the object for fixing time limit for litigation is based on public policy fixing a life span for legal remedy for the purpose of general welfare. They are meant to see that the parties do not resort to dilatory tactics but avail their legal remedies promptly. Salmond in his jurisprudence states that the laws come to the assistance of the vigilant and not of the sleepy.”*

11. While dealing with the scope of jurisdiction under section 5 of the Limitation Act, as regards condonation of delay, the Hon'ble Apex Court in the case of **Lanka Venkateshwarlu (dead) by L.Rs., Vs. State of Andhra Pradesh and others**, (2011) 4 SCC 363 has observed as under:

“19. We have considered the submissions made by the learned counsel. At the outset, it needs to be stated that generally speaking, the courts in this country, including this Court, adopt a liberal approach in considering the application for condonation of delay on the ground of sufficient cause under Section 5 of the Limitation Act. This principle is well settled and has been set out succinctly in the case of Collector, Land Acquisition, Anantnag & Ors. Vs. Katiji & Ors. (1987) 2 SCC 107.

23. The concepts of liberal approach and reasonableness in exercise of the discretion by the Courts in condoning delay, have been again stated by this Court in the case of **Balwant Singh Vs. Jagdish Singh**, (2010) 8 SCC 685, as follows:-

“25. We may state that even if the term “sufficient cause” has to receive liberal construction, it must squarely fall within the concept of reasonable time and proper conduct of the party concerned. The purpose of introducing liberal construction normally is to introduce the concept of “reasonableness” as it is understood in its general connotation.”

26. *The law of limitation is a substantive law and has*



definite consequences on the right and obligation of party to arise. These principles should be adhered to and applied appropriately depending on the facts and circumstances of a given case. Once a valuable right has accrued in favour of one party as a result of the failure of the other party to explain the delay by showing sufficient cause and its own conduct, it will be unreasonable to take away that right on the mere asking of the applicant, particularly when the delay is directly a result of negligence, default or inaction of that party. Justice must be done to both parties equally. Then alone the ends of justice can be achieved. If a party has been thoroughly negligent in implementing its rights and remedies, it will be equally unfair to deprive the other party of a valuable right that has accrued to it in law as a result of his acting vigilantly.”

28. We are at a loss to fathom any logic or rationale, which could have impelled the High Court to condone the delay after holding the same to be unjustifiable. The concepts such as “liberal approach”, “justice oriented approach”, “substantial justice” can not be employed to jettison the substantial law of limitation. Especially, in cases where the Court concludes that there is no justification for the delay. In our opinion, the approach adopted by the High Court tends to show the absence of judicial balance and restraint, which a Judge is required to maintain whilst adjudicating any lis between the parties. We are rather pained to notice that in this case, not being satisfied with the use of mere intemperate language, the High Court resorted to blatant sarcasms.

29. The use of unduly strong intemperate or extravagant language in a judgment has been repeatedly disapproved by this Court in a number of cases. Whilst considering applications for condonation of delay under Section 5 of the Limitation Act, the Courts do not enjoy unlimited and unbridled discretionary powers. All discretionary powers, especially judicial powers, have to be exercised within reasonable bounds, known to the law. The discretion has to be exercised in a systematic manner informed by reason. Whims or fancies; prejudices or predilections can not and should not form the basis of exercising discretionary powers. ”

12. The Hon'ble Supreme Court in a recent decision **Maniben Devraj Shah Vs. Municipal Corporation of Brihan, Mumbai, (2012) 5 SCC 157** has held in para 24 as under:-

“24. What colour the expression “sufficient cause” would get in the factual matrix of a given case would largely depend on bona fide nature of the explanation. If the Court finds that there has



been no negligence on the part of the applicant and the cause shown for the delay does not lack bona fides, then it may condone the delay. If, on the other hand, the explanation given by the applicant is found to be concocted or he is thoroughly negligent in prosecuting his cause, then it would be a legitimate exercise of discretion not to condone the delay.”

13. In view of the aforesaid authoritative pronouncement of law as regards object, scope, extent, limitation and the discretion power to be exercised under section 5 of the Limitation Act laid (6) down by the Hon'ble Apex Court, this Court is of the view that the delay of about 3158 days caused in filing the appeal by the appellant is miserably barred by limitation as neither sufficient cause is shown in the application nor any documentary evidence has been produced by appellant seeking condonation of delay nor the same is found to be the satisfaction of this Court.

14. Accordingly, I.A. No. 3966/2015 seeking condonation of delay in filing the appeal is dismissed. Consequently, second appeal is also **dismissed as barred by limitation**. No order as to cost.

(HIRDESH)
JUDGE

MKB