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THE HIGH COURT OF MADHYA PRADESH
Second Appeal No.1226/2017
Lokpal Singh and another Vs. Matre and others

Gwalior, Dated :08/01/2019

Shri Rajnish Sharma, Advocate for appellants.

Shri C.P. Singh, Advocate for respondents no.4, 5 and 6.

Shri A.K. Nirankari, Public Prosecutor for respondent no.7/State.

This second appeal under Section 100 of CPC has been filed against the judgment and decree dated 9/9/2017 passed by the Second Additional District Judge, Karera, District Shvipuri in Civil Appeal No.82-A/2017, by which the appeal filed by the appellants was dismissed as barred by limitation.

The necessary facts for disposal of the present appeal in short are that the appellants had filed a suit for declaration of title and permanent injunction. The said suit was dismissed by the trial court by judgment and decree dated 29/1/2013 passed in Civil suit No.117-A/2012. The appellants filed first appeal under Section 96 of CPC on 4/4/2014 alongwith an application under Section 5 of the Indian Limitation Act. The said application was dismissed by the appellate court and consequently, the appeal has also been dismissed as barred by limitation.

It is submitted by the counsel for the appellants that before deciding the question of limitation, it was the duty of the

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appellate court to consider the facts of the case and it should not have dismissed the application filed under Section 5 of the Indian Limitation Act and thus, the order passed by the appellate court, by which the application filed under Section 5 of the Indian Limitation Act has been rejected, is bad. To buttress his contentions, the counsel for the appellants has relied upon the judgments passed by the Supreme Court in the cases of **Vinod Kumar Vs. Gangadhar** reported in **(2015) 1 SCC 391**, **Madina Begum and Another Vs. Shiv Murti Prasad Pandey and others** reported in **(2016) 15 SCC 322** and **C. Venkata Swamy Vs. H.N. Shivanna (Dead) By Legal Representative and Another** reported in **(2018) 1 SCC 604**.

Heard learned counsel for the parties.

In **Vinod Kumar, Madina Begum and C. Venkata Swamy (supra)** it has been held by the Supreme Court that the First Appellate Court being the Court of First Appeal is under a duty to deal with all issues and evidence led by the parties before recording its finding. Even before holding that the suit is barred by limitation, the First Appellate Court is under obligation to consider the pleadings and evidence led by the parties.

The submissions made by the counsel for the appellants

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cannot be accepted because in the present case the appellate court has rejected the application filed by the appellants under Section 5 of the Indian Limitation Act and the appellate court would get a jurisdiction to entertain the appeal only when the delay is condoned. When the application under Section 5 of the Indian Limitation Act was rejected, then as a natural consequence, the First Appeal was also dismissed as barred by limitation. Unless and until the delay is condoned, it cannot be said that there was any appeal in the eye of law. Thus, this court is of the considered opinion that the judgments, on which reliance has been placed by the appellants, have no application to the facts of the present case, because in those cases it has been held by the Supreme Court that being the First Appellate Court the appeal should not be disposed of cursorily and should be disposed of only after considering the pleadings as well as the evidence led by the parties, whereas in the present case, the question was that whether the appeal filed by the appellants before the First Appellate Court was not filed because of any sufficient reason or the appellants themselves were negligent in filing the appeal. Although no argument has been advanced by the counsel for the appellants with regard to the sufficiency of reasons for not filing the

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appeal within the period of limitation, but in order to do complete justice, this Court has gone through the application filed under Section 5 of the Indian Limitation Act before the First Appellate Court. For explaining the delay of more than one year and two months it is merely stated by the appellants that since the appellants were not aware of the dismissal of the suit, therefore, they could not file the appeal within the period of limitation. The ground raised by the appellants in the application for condonation of delay cannot be said to be sufficient warranting condonation of delay of more than one year and two months. Being the plaintiffs, it was the duty of the appellants to keep a track of their civil suit and in view of the fact that nowadays everybody is having a mobile phone and they have full technical facilities to contact their counsel even on mobile and having failed to do so, this Court is of the considered opinion that the appellants have failed to make out any good reason before the appellate court for condonation of delay in filing the appeal. Accordingly, this Court is of the considered opinion that the appellate court did not commit any mistake in rejecting the application filed by the appellants under Section 5 of the Indian Limitation Act.

Under the facts and circumstances of the case, this Court

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is of the considered opinion that no case is made out warranting admission of appeal. The appeal is, accordingly, dismissed.

Arun*

(G.S. Ahluwalia)
Judge