



**IN THE HIGH COURT OF MADHYA PRADESH  
AT GWALIOR**

BEFORE

**HON'BLE SHRI JUSTICE G. S. AHLUWALIA**

**ON THE 31<sup>st</sup> OF JULY, 2025**

**SECOND APPEAL No. 2195 of 2023**

***SMT BHOORI BAI AND OTHERS***

*Versus*

***SAURABH SINGH CHAUHAN***

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**Appearance:**

*Shri Sanjeev Tiwari - Advocate for appellants.*

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**JUDGMENT**

This Second Appeal, under Section 100 of CPC, has been filed against the order dated 22.08.2023 passed by XII District Judge, Gwalior (M.P.) in Regular Civil Appeal No.34/2021 by which an application filed by appellants under Section 5 of Limitation Act was dismissed and the appeal was dismissed as barred by time.

2. The facts, necessary for disposal of present appeal, in short, are that plaintiffs filed a suit for declaration of title and permanent injunction. The suit was dismissed by the Trial Court by judgment and decree dated 30.09.2019. Thereafter, Regular Civil Appeal under Section 96 of CPC was filed on 08.03.2021 along with an application filed under Section 5 of Limitation Act. By order dated 22.08.2023, the Appellate Court has rejected the application filed



under Section 5 of Limitation Act and has accordingly dismissed the appeal as barred by time.

3. Challenging the order passed by the Appellate Court, it is submitted by counsel for appellants that the Appellate Court has miscalculated the period of limitation. It is submitted that the trial was being contested by the holder of power of attorney. Since Power of Attorney holder had gone to Gujarat in order to earn his livelihood, therefore, appellants were not aware of the disposal of the appeal. In view of Covid-19 pandemic, the holder of power of attorney came back in the month of March, 2020 and when he contacted his counsel about the progress of trial, then Power of Attorney was informed by the counsel that appeal has already been dismissed. Thus, it was claimed that the appeal could not be filed within the period of limitation and thus, appellants themselves claimed that the delay of 171 days in filing the appeal may be condoned.

4. Although in the application filed under Section 5 of Limitation Act it was claimed that the power of attorney holder had shifted to Gujarat but this application is not supported by an affidavit of Power of Attorney holder, namely, Phool Singh. This application under Section 5 of Limitation Act was filed along with the affidavit of appellant No.1. The application is completely silent to the effect that in which institution Phool Singh was working in Gujarat. This application also does not disclose the fact as to when appellant No.1 came to know about the dismissal of appeal because in this application it has not been disclosed that when Phool Singh informed appellants about the dismissal of appeal.

5. That is not the end of the matter.

6. From the record of Appellate Court, it is clear that the appeal was filed along with certified copy of the judgment and decree dated 30.09.2019. An



application for supply of certified copy of the impugned judgment was filed on 03.10.2019 and the certified copy was supplied on 14.10.2019. It is not the case of appellants that certified copy was obtained by their counsel without there being any instruction by appellants. Thus, it is clear that appellants were aware of the judgment and decree dated 30.09.2019, therefore, they had filed an application for grant of certified copy on 03.10.2019 which was ready on 14.10.2019. In the application filed under Section 5 of Limitation Act, it was mentioned that appellants are *Pardanasheen* ladies and they are illiterate persons and are household ladies. They never go outside and never contact the lawyers. The aforesaid fact as mentioned in the application filed under Section 5 of Limitation Act is *per se* false even to the knowledge of the appellants. The suit was filed on 04.11.2015. The plaint was supported by the affidavit of appellants and the plaint was also verified by appellants. The important aspect is that by that time Phool Singh was not appointed as holder of Power of Attorney. Therefore, it is clear that appellants were personally prosecuting their cause and they had got the suit prepared from their lawyer by approaching his office. Furthermore on 25.10.2016, categorical statement was made by appellants before the Trial Court that they do not want to get the commission appointed for examination of any witness. If appellants were feeling some inconvenience by appearing before the court for recording of their evidence, then they could have prayed for appointment of commission for recording of their evidence but that was consciously waived by appellants.

7. Furthermore, another application under Order VI Rule 17 of CPC was filed by appellants on 08.11.2016. Although this application was not supported by an affidavit of any of the appellants but it cannot be said that the application for amendment was filed by the counsel for appellants without there being any



instruction from appellants. Thus, it is clear that appellants were regularly attending the court for the purposes of swearing in affidavits and they were regularly contacting their counsel for the purposes of contesting the case. Thereafter, it appears that when the case was fixed for recording of evidence of the plaintiffs, then in order to avoid their cross-examination, it appears that plaintiffs/appellants executed a Power of Attorney on 11.03.2017 in favour of Phool Singh and Phool Singh appeared as a witness on the strength of Power of Attorney on 15.03.2017 i.e. just four days after the execution of Power of Attorney. This conduct of appellants clearly shows that till the trial reached the stage of recording of evidence, they were personally prosecuting and monitoring the progress of trial but as soon as the case reached the stage of recording of evidence, they immediately appointed the Power of Attorney in order to avoid their cross-examination in the court. Under these circumstances, the contention of appellants that they are illiterate, *Pardanasheen* ladies who do not go out of their house is *per se* false even to the knowledge of appellants.

8. As already pointed out, the application filed under Section 5 of Limitation Act was not supported by the affidavit of Power of Attorney holder- Phool Singh. Under these circumstance, this Court is of considered opinion that since the period of limitation for filing appeal had already expired in the month of November, 2019 whereas the Nationwide lockdown was imposed from 20.03.2020 and the reasons which were assigned in the application by appellants for condonation of delay in filing appeal are not sufficient, therefore, it is held that the Appellate Court did not commit any mistake by rejecting the application filed by appellants under Section 5 of Limitation Act.

9. At this stage, it is submitted by counsel for appellants that while deciding the application for condonation of delay, the court must take a lenient view.



10. The said submission made by counsel for appellants is correct, provided the reasons assigned by appellants are not based on the ground which are false even to the knowledge of appellants. This Court has already come to the conclusion that appellants were pursuing their suit and they decided to stay away from the court proceedings only when they were required to attend the court for their cross-examination.

11. As no illegality was committed by the Appellate Court by dismissing the application filed under Section 5 of Limitation Act, accordingly, no Substantial Question of Law arises in the present appeal. The order dated 22.08.2023 passed by the Appellate Court i.e. XII District Judge, Gwalior (M.P.) in Regular Civil Appeal No.34/2021 and the judgment and decree passed by the Trial Court are hereby affirmed. Appeal fails and is hereby *dismissed*.

**(G.S. Ahluwalia)**  
**Judge**