

HIGH COURT OF MADHYA PRADESH : BENCH AT INDORE

SINGLE BENCH : HON'BLE SHRI JUSTICE VIVEK RUSIA

S.A. No.43 of 2015

Sampatbai & others.

... Appellants.

Vs.

Smt. Kamlabai & others.

... Respondents.

-x-x-x-x-x-x-x-x-x-x-

Shri J.B. Mehta, Advocate for the appellants.

Shri R.S. Laad, Advocate for respondents No.1 to 5.

-x-x-x-x-x-x-x-x-x-x-

JUDGMENT

(Reserved on 31.01.2018)

(Passed on February, 2018)

Respondent No.1, 2 and Late Badriprasad (now represented through legal heir – respondents No. 3 to 5) filed the suit for declaration, possession and mesne profit against the Motidas (represented through legal heirs), respondents No. 6 to 9 being C.S. No.16-A/1988. The trial Court vide judgment dated 30.8.2001 had decreed the suit in favour of the plaintiff but held that the decree would become executable on payment of proper Court-fees by the plaintiff.

2. Being aggrieved by the aforesaid judgment and decree, defendants preferred Civil Appeal No.22-A/2005 and 23-A/2005 before the first appellate Court. The First Appellate Court vide judgment dated 27.6.2005 has found that since the suit was not properly valued and proper court-fees was not paid, then the trial Court ought not to have decided the suit on merit and should have returned the plaint for presentation before the Court having

jurisdiction. The first appellate Court set aside the judgment and decree and remanded the suit back to the trial Court with a direction to get the suit properly valued and return of the plaint.

3. Being aggrieved by the judgment dated 27.6.2005, the plaintiff preferred Misc. Appeal No.276/2007 and 278/2007 before this Court. Vide order dated 9.5.2012, this Court has remitted the appeal to the first appellate Court to decide the Issue No.9 afresh in the light of provisions contained in Section 11 of the Suit Valuation Act.

4. That vide judgment dated 17.6.2013, the first appellate Court has upheld the judgment and decree on the ground that now, the Civil Court who passed the judgment and decree is now having pecuniary jurisdiction to decide the suit as the valuation of the suit is 1,00,000/- and Court –fees of Rs.12,000/- was paid hence upheld the decree passed in favour of the plaintiff.

5. Now, the legal heir of defendant No.1 Motidas have filed the present second appeal against the judgment dated 17.6.2013 passed by 1st Additional District Judge in CA No.22-A/2005 – 2012. The appeal is barred by 485 days, therefore, the appellants have filed an application u/s. 5 of the Limitation Act for condonation of delay.

6. In the application, the appellants have submitted that they wanted to engage Shri J.B. Mehta, Advocate of Indore for filing this appeal, hence on their behalf Shambhudas consulted him for filing an appeal. Thereafter, they were under the impression that Shambhudas had entrusted certified copy of the impugned

judgment to Shri Mehta and he must have filed the appeal. On 16.1.2015, while searching the papers, Shambhudas got the certified copy of the impugned order along with other papers, then he came to know that he was under wrong impression that he had handed over the certified copy to Shri Mehta, but the fact remains that he did not hand over the certified copy and papers to Shri Mehta for filing the appeal. Therefore, the sole reason for delay is bonafide, hence liable to be condoned.

7. The respondents filed the reply by opposing the prayer on the ground that under strict compliance of Section 5 of the Limitation Act, the parties are required to give valid justification for each day's delay. The application u/s. 5 has been filed in a very casual manner, hence same is liable to be dismissed.

8. Shri Mehta in support of his contention has placed reliance over the judgment of Apex Court passed in case of **K. Subbarayudu V/s. The Special Deputy Collector : 2017 SAR (Civil) 1003**; **Gangadhara Palo V/s. Revenue Divisional Officer : (2011) 4 SCC 602**; **Dhapubai (Smt.) V/s. Union of India : 2002 (I) MPWN 60**; **Nirmalabai (Smt.) V/s. Dr. Omprakash : 2002 (I) MPWN 193**; and **Salikram & others V/s. Keshav & others : 2012 (1) MPLJ 93**, and submitted that the appellants were vigilant about their rights as they are continuously pursuing the litigation since 1998. They have a very good case on merits also and the delay is bonafide, therefore, the same is liable to be condoned.

9. Shri Laad, learned counsel appearing for the

respondents, vehemently opposed the prayer and placed reliance over various judgments passed by this Court in **M.P. Road Development Corporation V/s. Satindersingh & others (F.A. No.460/2016** decided on 23.2.2017; **Mst. Shabana Anjum V/s. Mohd. Sulman : 2017 (2) MPLJ 232**; **Rajendra Kumar Adhwaryu V/s. Parmanand : ILR (2015 MP 2155**; **Baldu V/s. Jagdish Prasad : 2015 SCC OnLine MP 2669**; **State of M.P. V/s. Late Abdul Gani through L.Rs. : ILR (2014) MP 2690**;

10. It is correct that the term “sufficient cause” as mentioned in Section 5 of the Limitation Act is to give liberal construction so as to advance the substantial justice when no negligence, inaction or want of bonafide is attributable to the appellant, the Court should adopt justice oriented approach in condoning the delay. Section 5 of the Limitation Act gives power to the Court to condone the delay only when the party approaching the Court satisfies that he had sufficient cause for not filing the appeal within prescribed period of limitation. In the present case, the only reason given by the appellants are that Shambhudas who is one of the legal heir of defendant No.1 late Motidas, was under the impression that he had given certified copy to Shri Mehta, Advocate for filing the appeal. This sole reason may be bonafide but not supported by valid reasons and materials as for filing the appeal, not only certified copies of impugned judgment, but Vakalatnama duly signed by all the parties, copy of plaint, written statement and other documents are also required to be handed over to the counsel. The appellants are also required to purchase the Court-fees and pay counsel-fees also. In the application, Shambhudas has not stated that he had purchased the Court-fees

and paid the counsel-fees also to Shri Mehta for filing the appeal. There are as many as five appellants in this appeal. They all were required to sign the Vakalatnama. The Vakalatnama filed along with this appellant was signed on 19.1.2015 and the appeal was filed on 20.1.2015, which establishes that the appellants did not hand over the Vakalatnama to Shri Mehta along with certified copy of the judgment of the appellate Court within the period of limitation at the relevant time for filing the appeal. There is no pleading in the application about payment of Court-fees and counsel-fees to Shri Mehta, therefore, the reasons given in the application are very vague in nature for which, the appellants are not entitled for condonation of delay of 485 days, hence the application is dismissed. Consequently, the appeal also stands dismissed. No order as to costs.

**(VIVEK RUSIA)
JUDGE**

Alok/-