

IN THE HIGH COURT OF MADHYA PRADESH
AT JABALPUR
BEFORE
HON'BLE SHRI JUSTICE HIRDESH
ON THE 17th OF JANUARY, 2024

SECOND APPEAL No. 1098 of 2022

BETWEEN:-

KUNJILAL S/O SHRI CHETU AHIRWAR, AGED ABOUT 77 YEARS, R/O MADANPUR POST SEMRAHAAT, THE. AND DISTT. SAGAR (M.P.) (MADHYA PRADESH)

.....APPELLANT

(BY SHRI SHYAM YADAV - ADVOCATE)

AND

**RAMAKANT S/O LATE SHRI RAM JEEVAN SHUKLA, AGED ABOUT 73 YEARS, R/O IN FRONT OF LADIES
1. POLE TECHNIQUE COLLAGE SHIVAJI NAGAR. WARD
TEH. AND DISTT. SAGAR (M.P.)**

**2. STATE OF M.P. THROUGH COLLECTOR SAGAR
DISTRICT SAGAR (MADHYA PRADESH)**

.....RESPONDENTS

(BY SHRI TIKARAM KURMI – PANEL LAWYER)

Reserved on : 04.12.2023

Pronounced on : 17.01.2024

This appeal having been heard and reserved for judgment, coming on for pronouncement this day, the Court passed the following:

JUDGMENT

1. The present second appeal is filed by the appellant/ defendant under Section 100 of C.P.C. against the order dated 17.03.2016 passed by the Fourth Additional District Judge, Sagar, District Sagar in M.J.C. No. 01/2015 whereby the First Appellate Court found the appeal filed by the appellant as time barred and dismissed the same as such.
2. The brief facts of the case are that respondent No.1/ plaintiff filed a civil suit for specific performance of agreement dated 29.05.2006 executed between the plaintiff and defendant / appellant herein before the Civil Court, Sagar, which was registered as Civil Suit No. 20A/09. In the aforesaid civil suit, it was alleged that plaintiff / respondent No.1 executed an agreement on 29.05.2006 with appellant in respect of land bearing Khasra No. 64 area .40 hectare of land of Patwari Halka No. 27, Revenue Circle Naryoli, Tahsil and District Sagar (M.P.).
3. The appellant/ defendant filed his written statement before the Civil Court, in which he denied all the averments made in the plaint and additionally submitted that plaintiff is doing loan business and the appellant had taken some loan from plaintiff due to which he made an agreement with him and later he had already paid entire lone amount to the plaintiff.
4. The trial Court framed the issues and after recording the evidence of the parties, the trial Court decided the aforesaid civil suit in favour of the plaintiff/ respondent No.1 and passed the judgment and decree dated 30.07.2010.
5. Being aggrieved by the judgment and decree dated 30/07/2010 of the lower court, the appellant/ defendant filed an appeal under section 96 of the C.P.C. before the lower appellate court after long lapse of time on the ground that he is a poor illiterate person so he could not understand the circumstances & consequences of the judgment & decree and also that his

previous advocate had not properly given the information of the decree and judgment, which was registered as M.J.C. no. 01/2015.

6. The First Appellate Court vide impugned order decided the M.J.C. and found that the appellant had not given sufficient reason for delay so the appeal was dismissed on the ground of delay without registering first appeal and deciding the same on merits.

7. Being aggrieved with the aforesaid order, the appellant filed this appeal and submitted that the impugned order dated 17.03.2016 passed by the First Appellate Court is erroneous and liable to be set aside. He further submitted that the he (appellant) is an illiterate person and was not aware about the consequences of the judgment and decree, due to which he could not file the appeal within the limitation period. Besides this, the appellant was suffering from a disease which made him unconscious for a long time and his treatment was going on. When the appellant got advice from an advocate, he filed the appeal before the appellate Court which was merely dismissed on the ground of delay. Under these grounds, he prays for setting aside the impugned order dated 17.03.2016 passed by the First Appellate Court and remanding the matter for proper adjudication, in the interest of justice.

8. Learned counsel for the State opposed the appeal and prays for its dismissal.

9. Heard learned counsel for the parties and perused the record.

10. Order 41, Rule 3-A of C.P.C. reads as under :-

Order 41 Rule 3-A: - Application For Condonation of

Delay- (1) When An appeal is presented after the expiry of the period of limitation specified therefor, it shall be accompanied by an application supported by affidavit setting forth the facts on which the appellant relies to satisfy the court that he had sufficient cause for not preferring the appeal within such period.

(2) If the Court sees no reason to reject the application without the issue of a notice to the respondent, notice thereof shall be

issued to the respondent and the matter shall be finally decided by the court before it proceeds to delay with the appeal under rule 11 or rule 13, as the case maybe.

(3) Where an application has been made under sub-rule (1), the court shall not make an order for the stay of execution of the decree against which the appeal is proposed to be filed so long as the Court does not, after hearing under rule 11, decide to hear the appeal.

11. In the present case, the First Appellate Court registered the application filed by the appellant with his appeal as M.J.C. and issued notice to the respondents and heard both the parties.

12. Section 5 of the Limitation Act reads as under :-

“5 Extension of prescribed period in certain cases. —Any appeal or any application, other than an application under any of the provisions of Order XXI of the Code of Civil Procedure, 1908 (5 of 1908), may be admitted after the prescribed period, if the appellant or the applicant satisfies the court that he had sufficient cause for not preferring the appeal or making the application within such period. Explanation.— The fact that the appellant or the applicant was misled by any order, practice or judgment of the High Court in ascertaining or computing the prescribed period may be sufficient cause within the meaning of this section.

13. Learned counsel for the appellant submitted that while considering the application for condonation of delay, liberal approach should be adopted by the Court.

14. It is true that while considering the application for condonation of delay, liberal approach should be adopted by the Court, however, in **Ratanlal Vs. Shivlal and others , 2017(1) MPLJ 98**, it is held that while considering the application for condonation of delay, liberal approach

should be adopted but while adopting liberal approach, Court cannot ignore the principle of law that law comes to rescue only diligent litigants. In the present case, the trial Court passed the judgment and decree dated 30.07.2010 and appellant filed first appeal before the first appellate Court on 14.11.2014 i.e. after delay of about 4 years and 2 months. Before the First Appellate Court, he submitted that he met with an accident and received head injury, but he produced documents before the First Appellate Court which was dated 8.2.1993 that was much before this trial Court litigation.

15. On perusal of the order passed by the First Appellate Court, it is evident that respondent No.1/ plaintiff filed execution of judgment and decree and appellant appeared before the Executing Court on 10.05.2011. It is clear that he had knowledge of passing of such judgment and decree by the trial Court on 20.02.2013 and had signed in the order-sheet of the Executing Court.

16. In **Jahoor Khan and others Vs. Ramvaran and others, ILR 2017 M.P. 93**, the Co-ordinate Bench of Gwalior High Court held if sufficient cause is not shown and is not found to the satisfaction of the Court, then application for condonation of delay should be dismissed.

17. In the present case, the appellant/ defendant filed First Appeal before the First Appellate Court after lapse of four years on the ground of accident but documents produced before the First Appellate Court is not satisfactory and he appeared before the Executing Court on 10.05.2011 and 20.02.2013 so under these facts and circumstances, it cannot be said that appellant had no knowledge of legal procedure or judgment passed by the trial Court.

18. In view of the aforesaid discussion, it is evident that the appellant had not provided satisfactory reason before the trial Court for condonation of delay and trial Court rightly found that the appellant had not shown sufficient cause for condonation of delay. Hence, in the considered opinion

of this Court, the First Appellate Court has not committed any error in passing the impugned order.

Consequently, the appeal being devoid of merit is hereby **dismissed**.

(HIRDESH)

JUDGE

Vikram