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SA-164-2023

IN THE HIGH COURT OF MADHYA PRADESH  
AT JABALPUR

BEFORE

HON'BLE SHRI JUSTICE SANJAY DWIVEDI

ON THE 25<sup>th</sup> OF SEPTEMBER, 2024SECOND APPEAL No. 164 of 2023*THE STATE OF MADHYA PRADESH AND OTHERS**Versus**MOHAN LAL*

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Appearance:

*Shri Vineet Singh - Government Advocate for the appellants/defendants.*

*Shri Manish Mukhraiya - Advocate for the respondent/plaintiff.*

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ORDER

Heard on I.A. No.1050/2023, which is an application filed under Section 5 of the Limitation Act for condoning the delay occurred in filing this appeal.

While filing the instant appeal, there is a delay of more than 1200 days. One of the reasons assigned in the application for condoning the delay is that the suit filed by the plaintiff got dismissed by the trial Court and thereafter, though an appeal was preferred by the plaintiff, but no notice of that appeal was ever served upon the appellants and as such, the delay of 1271 days is caused in filing the instant appeal. In the application, it is further mentioned that because of COVID-19, a lockdown was imposed in the country and as such, the period w.e.f. 24.03.2020 till 28.03.2022 in availing the legal remedy was excluded by the Supreme Court within the period of limitation and as such, it is prayed in the application that giving benefit of such exclusion, the delay may be condoned. It is also mentioned in



the application that from March, 2022 till August, 2022, the Tahsildar, who was looking after the case was said to have been engaged in the election duties of Panchayat and Municipal Corporation and as such, the authority was busy in preparing the voter-lists as also in other official work and, therefore, the authority had no knowledge about the impugned judgment and decree dated 24.04.2019. In the application, it is further mentioned that on 10.08.2022, when the notice of executing case i.e. Ex.A./11/2021 issued by Executing Court got served upon the appellants, then only they came to know about the impugned judgment and decree and as such, after obtaining the certified copy of the judgment and decree on 09.01.2023 and also the record of the case, the present appeal has been filed. It is prayed in the application that since the reasons assigned in the application for condoning the delay appear to be *bona fide*, therefore, it may kindly be condoned.

On the other hand, in the reply to the aforesaid application, it is averred that no sufficient explanation for condoning the delay is shown by the appellants. It is also stated in the reply that even after getting the knowledge of the impugned judgement and decree on 11.07.2022, the appellants preferred the appeal on 17.01.2023. It further stated in the reply, that though because of COVID-19, a lockdown was imposed, but prior to imposition of lockdown, the appeal could have been filed, but that was not done. It is prayed in the reply that looking to the aforesaid attitude of the appellants, the application filed for condonation of delay deserves to be dismissed.

From perusal of order-sheet dated 29.11.2016 of the Appellate Court,



it reveals that notice of the case was issued to the respondents (appellant herein). Order-sheet dated 20.01.2017 reveals that one Dinesh Tiwari, Advocate appeared on behalf of the appellants before the Appellate Court and thereafter, in all other subsequent dates, he was representing the appellants and as such, it reflects that it is not a case in which proper notice of the case was not issued to the respondents (appellants herein) and, therefore, the stand taken by the appellants in their application in respect of not receiving any notice of Appellate Court does not have any leg to stand and accordingly, it is rejected. The Supreme Court in a case reported in (2022) 2 SCC 244 [V. Nagarajan Vs. SKS Ispat and Power Limited and others] has considered this aspect that if any application for taking certified copy is made before expiry of limitation period, then only the delay in filing the application can be considered, but if application is not made after the period of limitation then the delay occurred in filing the appeal cannot be condoned. In the case of V. Nagarajan (supra), the Supreme Court has observed as under:-

'30. Section 12 of the Limitation Act provides guidance on reckoning the period of limitation and excludes the time taken by a party for obtaining a certified copy of the order it seeks to appeal. However, the Explanation clarifies that the time taken by the court in preparing the order before an application for a copy is filed by the aggrieved party, is not excluded from the computation of limitation:

*"12. Exclusion of time in legal proceedings .—(1) In computing the period of limitation for any suit, appeal or application, the day from which such period is to be reckoned, shall be excluded.*

*(2) In computing the period of limitation for an appeal or an application for leave to appeal or for revision or for review of a judgment, the day on which the judgment complained of was pronounced and the time requisite for obtaining a copy of the decree, sentence or order appealed from or sought to be revised or reviewed shall be excluded.*

(3) Where a decree or order is appealed from or sought to be revised or reviewed, or where an application is made for leave to appeal from a decree or order, the time requisite for obtaining a copy of the judgment shall also be excluded.

(4) In computing the period of limitation for an application to set aside an award,



the time requisite for obtaining a copy of the award shall be excluded.

*Explanation.—In computing under this section the time requisite for obtaining a copy of a decree or an order, any time taken by the court to prepare the decree or order before an application for a copy thereof is made shall not be excluded.”*

(emphasis supplied)

31. The import of Section 12 of the Limitation Act and its Explanation is to assign the responsibility of applying for a certified copy of the order on a party. A person wishing to file an appeal is expected to file an application for a certified copy before the expiry of the limitation period, upon which the “time requisite” for obtaining a copy is to be excluded. However, the time taken by the court to prepare the decree or order before an application for a copy is made cannot be excluded. If no application for a certified copy has been made, no exclusion can ensue. In fact, the Explanation to the provision is a clear indicator of the legal position that the time which is taken by the court to prepare the decree or order cannot be excluded before the application to obtain a copy is made. It cannot be said that the right to receive a free copy under Section 420(3) of the Companies Act obviated the obligation on the appellant to seek a certified copy through an application. The appellant has urged that Rule 14 [ “14. Power to exempt.—The Appellate Tribunal may on sufficient cause being shown, exempt the parties from compliance with any requirement of these rules and may give such directions in matters of practice and procedure, as it may consider just and expedient on the application moved in this behalf to render substantial justice.”] of the Nclat Rules empowers Nclat to exempt parties from compliance with the requirement of any of the rules in the interests of substantial justice, which has been typically exercised in favour of allowing a downloaded copy in lieu of a certified copy. While it may well be true that waivers on filing an appeal with a certified copy are often granted for the purposes of judicial determination, they do not confer an automatic right on an applicant to dispense with compliance and render Rule 22(2) of the Nclat Rules nugatory. The act of filing an application for a certified copy is not just a technical requirement for computation of limitation but also an indication of the diligence of the aggrieved party in pursuing the litigation in a timely fashion. In a similar factual scenario, Nclat had dismissed an appeal [Prowess International (P) Ltd. v. Action Ispat & Power (P) Ltd., 2018 SCC OnLine NCLAT 644] as time-barred under Section 61(2) IBC since the appellant therein was present in court, and yet chose to file for a certified copy after five months of the pronouncement of the order.

x x x

35. The appellant was present before NCLT on 31-12-2019 when interim relief was denied and the miscellaneous application was dismissed [Cethar Ltd. (Resolution Professional) v. SKS Ispat & Power Ltd., MA No. 906/IB/2019 in CA No. 38/IB/2018, order dated 31-12-2019 (NCLT)] . The appellant has demonstrated no effort on his part to secure a certified copy of the said order and has relied on the date of the uploading of the order (12-3-2020) on the website. The period of limitation for filing an appeal under Section 61(1) against the order of NCLT dated 31-12-2019 [Cethar Ltd. (Resolution Professional) v. SKS Ispat & Power Ltd., MA No. 906/IB/2019 in CA No. 38/IB/2018, order dated 31-12-2019 (NCLT)] , expired on 30-1-2020 in view of the thirty-day period prescribed under Section 61(2). Any scope for a condonation of delay expired on 14-2-2020, in view of the outer limit of fifteen days prescribed under the proviso to Section 61(2). The lockdown from 23-3-2020 on account of the Covid-19 Pandemic and the suo motu order [Cognizance for Extension of Limitation, In re, (2020) 19 SCC 10 : (2021) 3 SCC (Cri) 801 (“suo motu order”)] of this Court has had no impact on the rights of the appellant to institute an appeal in this proceeding and Nclat has correctly dismissed the appeal on limitation. Accordingly, the present appeal under Section 62 IBC stands dismissed.<sup>1</sup>



Thus, considering the aforesaid aspect and view taken by the Supreme Court, I am also of the opinion that in the present case when admittedly certified copy of the impugned judgment and decree of Appellate Court was applied on 03.01.2023 which got delivered upon the appellants on 09.01.2023, then the period of delay in filing the instant appeal cannot be considered to be within the period of limitation and as such, application i.e. I.A. No.1050/2023 is rejected. Consequently, the appeal filed by the appellants also stands **dismissed** on the ground of delay.

(SANJAY DWIVEDI)  
JUDGE

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