

***IN THE HIGH COURT OF DELHI AT NEW DELHI**

% *Date of Judgment : 25.10.2010*

+ **R.S.A.No.93/2001**

BARKAT RAM Appellant
Through: Mr.I.C.Kumar, Advocate.

Versus

RAN VIR SINGH MATHUR Respondent
Through: Mr.P.S.Vats & Mr.Manish Vats,
Advocates.

CORAM:
HON'BLE MS. JUSTICE INDERMEET KAUR

1. Whether the Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporter or not? Yes
3. Whether the judgment should be reported in the Digest? Yes

INDERMEET KAUR, J.(Oral)

1. This appeal has been directed against the impugned judgment dated 19.12.2000 which had dismissed the appeal of the appellant/plaintiff on the ground of limitation; it was held that the appeal is barred by time by a period of 3 days. This judgment is the subject matter of a second appeal before this court.

2. Perusal of the record shows that the appeal is yet to be admitted; substantial question of law has not yet been formulated; the matter has however been shown on the regular board. The counsel for the appellant has pointed out that a substantial question of law has arisen as the impugned judgment has recorded incorrect findings which are perverse and against the evidence on record; the evidence clearly establishes that the appeal was filed before the first appellate court in time; the first appellate court has non-suited the appellant/plaintiff only on the ground of limitation; a

serious and grave prejudice has been suffered by the appellant as he has lost his right of first appeal on a perverse finding.

3. A substantial question of law has accordingly arisen which reads as follows:

“Whether the finding in the impugned judgment dated 19.12.2000 dismissing the appeal on the ground of limitation is a perverse finding? If so, its effect?”

4. Arguments have been addressed at length by both parties.

5. The trial court judgment had been delivered on 22.9.1997. This was in a suit for possession. After a detailed finding the suit of the plaintiff had been dismissed. The record of the first appellate court shows that the certified copy of the impugned judgment i.e. the judgment dated 22.9.1997 had been prepared on 21.10.1997. This is also the categorical finding given by the first appellate court in the impugned judgment. The record also shows that this appeal was filed on 21.11.1997 in the court of Senior Civil Judge. Thereafter it was assigned to the concerned court and taken up on 26.11.1997. However, the date of filing remained unchanged. Appeal was filed on 21.11.1997 and was well within the period of limitation. Record clearly shows that the appeal was not time barred; it could not have been dismissed on this short ground.

6. The impugned judgment has correctly recorded that the certified copy of the judgment was delivered on 21.10.1997 but has incorrectly recorded that the appeal was filed on 26.11.1997; the record at page 46 of the appeal book (Annexure-C) clearly negatives this position. Appeal was within time.

7. The contention of the learned counsel for the respondent is that the provisions of Section 12 of Indian Limitation Act, 1963 which allows for exclusion of time in legal proceedings could not have been made available to the appellant as the appellant had applied for the certified copy of the judgment on 10.9.1997 when the judgment had not even been delivered; the judgment was delivered on 22.9.1997. There is no doubt that the date mentioned in the application for the certified copy has been noted as 10.9.1997. Explanation furnished by the counsel for the appellant on this count is that arguments had been concluded before the trial court on 3.9.1997 and the matter was listed for judgment on 15.9.1997 on which date since the judge was on leave the next date was fixed for 22.9.1997 on which date the judgment was finally pronounced. It is submitted that the certified copy of the judgment was applied on 10.9.1997 itself as the arguments already stood concluded. This position is evidenced from the record. On 3.9.1997, the arguments were finally concluded in the matter and the matter was reserved for judgment.

8. Section 12 of the Limitation Act clearly stipulates that the limitation for filing an appeal commences from the date of judgment; "time requisite" as contained in Section 12 (2) is the period spent in obtaining the certified copy of the judgment after having applied for it till the time it is delivered. The information available on the record clearly shows that the certified copy of the judgment was delivered on 21.10.1997. This is also the contention of both the parties. The impugned judgment has recorded irrelevant paragraphs going into the alleged callous attitude of the copying agency in having delivered the certified copy of the

impugned judgment in advance; certified copy of the judgment was not delivered before 21.10.1997.

9. The appellant/plaintiff has lost a substantive right in not having been heard on merits. This cannot be taken to lightly. Findings in the impugned judgment are perverse and are liable to be set aside. The remedial action is to send back the matter for a re-appreciation on the merits of the appeal by the first appellate court.

10. Appeal is allowed. The matter is remanded back to the District & Sessions Judge, Tis Hazari Courts, Delhi who will assign it to the concerned court i.e. the first appellate court for hearing the appeal on its merits. The appeal was filed within time and now has to be adjudicated on its merits. The parties are directed to appear before the District & Sessions Judge, Tis Hazari Courts, Delhi on 2.11.2010 at 10.30 a.m. for assigning the matter to the concerned court.

INDERMEET KAUR, J.

OCTOBER 25, 2010.

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