

Court No. - 4

Case :- SECOND APPEAL No. - 182 of 2024

Appellant :- Sukha Badahu Janak Dulari

Respondent :- Vimal Kumar And Others

Counsel for Appellant :- Pankaj Kumar Srivastava

Hon'ble Rajnish Kumar,J.

1. Heard Sri Pankaj Kumar Srivastava, learned counsel for the appellant.
2. This Second Appeal has been filed challenging the judgment and order dated 23.07.2024 passed by the lower appellate court in Civil Misc. Case No.24 of 2024(Sukha Badahu Janak Dulari versus Vimal Kumar and Others) and judgment and decree dated 20.09.2002 passed in Regular Suit No.91/1995(Sukha alias Chhana alias Chhangui versus Deshraj).
3. The appellant had filed the highly time barred Civil Appeal against the judgment and decree dated 20.09.2002 alongwith an application under Section 5 of Limitation Act for condonation of delay before the lower appellate court. The ground for delay given in the appeal was that she was residing in Delhi with her husband, ailment,operation and death of his son. The respondent had opposed the application of the appellant on the ground that the husband of the appellant was residing in the village itself. The appellant had moved application for substitution and she was substituted in the original suit. She was also pairokar in the suit. Having considered the pleadings and evidence of the parties, the suit was decreed by means of the order dated 20.09.2002. The appellant had full knowledge of the judgment and decree passed by the lower appellate court.
4. The lower appellate court considered the grounds taken by the appellant and the objection of the respondents and found

that original suit was decreed by means of the judgment and decree dated 20.09.2002 on merit. The appellant was a party in the said suit. The civil appeal has been filed with a delay of 21 years 3 months and 15 days alongwith application under 5 of the Limitation Act. The ground for delay in filing the appeal are that she was residing in Delhi with her husband, illness of herself and death of her son but no documentary evidence was produced by her, therefore the appellant could not prove the grounds taken by him and the same are not sufficient. Accordingly, dismissed the application and consigned the file to records.

5. Having considered the submissions of learned counsel for the appellant, I have perused the records.

6. The civil appeal was filed by the appellant against the judgment and decree dated 20.09.2002 passed by the trial court on merit after affording opportunity to the parties including the appellant. The appellant had also contested the appeal after death of her husband. The appeal was filed with a delay of 21 years, 3 months and 15 days taking the grounds that she was residing in Delhi with her husband, illness of herself and death of her son. However, no proof in support thereof was filed. The application was opposed on the ground that the husband of the appellant was residing in the village and after his death the appellant was substituted and she herself was doing pairvi of case.

7. In view of above, this Court is of the view that such a long delay in filing the appeal has not been sufficiently explained by the appellant, rather false plea has also been taken as nothing contrary could be shown by learned counsel for the appellant.

8. The Hon'ble Supreme Court, in the case of **Lanka Vehkatswarlu Versus State of Andhara Pradesh and others;**

(2011) 4 SCC 363, has held that the concepts such as "liberal approach", "justice oriented approach", "substantial justice" cannot be employed to jettison the substantial law of limitation. Especially, in cases where the court concludes that there is no justification for the delay.

9. The Hon'ble Supreme Court, in a recent **judgment and order dated April 8, 2024 in the case of Pathapati Subba Reddy (Died) by LRs and others Versus The Special Deputy Collector (Land Acquisition); Special Leave Petition (Civil) No.31248 of 2018**, after considering several judgments of the Hon'ble Supreme Court and the relevant provisions of law of limitation Act has clarified the legal position in regard to the law of limitation and the principles for condonation of delay in paragraph 26, which are extracted here-in-below:-

"26. On a harmonious consideration of the provisions of the law, as aforesaid, and the law laid down by this Court, it is evident that:

(i) Law of limitation is based upon public policy that there should be an end to litigation by forfeiting the right to remedy rather than the right itself;

(ii) A right or the remedy that has not been exercised or availed of for a long time must come to an end or cease to exist after a fixed period of time;

(iii) The provisions of the Limitation Act have to be construed differently, such as Section 3 has to be construed in a strict sense whereas Section 5 has to be construed liberally;

(iv) In order to advance substantial justice, though liberal approach, justice-oriented approach or cause of substantial justice may be kept in mind but the same cannot be used to defeat the substantial law of limitation contained in Section 3 of the Limitation Act;

(v) Courts are empowered to exercise discretion to condone the delay if sufficient cause had been explained, but that exercise of power is discretionary in nature and may not be exercised even if sufficient cause is established for various factors such as, where there is inordinate delay,

negligence and want of due diligence;

(vi) Merely some persons obtained relief in similar matter, it does not mean that others are also entitled to the same benefit if the court is not satisfied with the cause shown for the delay in filing the appeal;

(vii) Merits of the case are not required to be considered in condoning the delay; and

(viii) Delay condonation application has to be decided on the parameters laid down for condoning the delay and condoning the delay for the reason that the conditions have been imposed, tantamounts to disregarding the statutory provision."

10. In view of above and the law laid down by the Hon'ble Supreme Court in order to advance substantial justice, though liberal approach, justice-oriented approach or cause of substantial justice may be kept in mind but the same cannot be used to defeat the substantial law of limitation contained in Section 3 of the Limitation Act. Courts are empowered to exercise discretion to condone the delay if sufficient cause has been explained, but that exercise of power is discretionary in nature and may not be exercised even if sufficient cause is established for various factors such as, where there is inordinate delay, negligence and want of due diligence and merits of the case are not required to be considered in condoning the delay.

11. Adverting to the facts of the present case, this Court finds that the appellant has failed to give the sufficient cause for such long delay. The appellant was also negligent in pursuing the matter because as per the averments of the appellant recorded in the impugned order, no reason for such a long delay has been given except above that too without any proof thereon. Therefore this Court is of the view that the impugned judgment and order has rightly been passed by the learned lower appellate court in accordance with law because such a long delay cannot be condoned on such casual grounds taken by the appellant

without any proof. The appeal has been filed on misconceived and baseless grounds. No substantial question of law arises in this appeal.

12. The appeal is, accordingly, **dismissed**.

Order Date :- 23.11.2024

Akanksha Sri.