

Court No. - 4

Case :- SECOND APPEAL No. - 208 of 2024

Appellant :- Subedar Sukla

Respondent :- Ambikeshwar And 5 Others

Counsel for Appellant :- Karunakar Srivastava, Shiv Sinha

Hon'ble Rajnish Kumar,J.

1. Heard Shri Karunakar Srivastava, learned counsel for the appellant.
2. This Second appeal has been filed challenging the judgment and order dated 14.08.2024, by means of which the application under Section 5 of the Limitation Act filed by the appellant bearing Civil Misc. Case No.298 of 2022 (Subedar Vs. Ambikeshwar and Others) passed by Additional Sessions Judge, Court No.4/ Special Judge (E.C. Act), Gonda has been dismissed being highly time barred. Consequently, the appeal stands dismissed.
3. Learned counsel for the appellant submits that the appellant had purchased the land in dispute by means of the sale deed dated 24.02.2020. He came to know about the judgment and decree passed by the trial court dated 15.05.2007 in Regular Suit No.180 of 1989 (Ram Sundar Vs. Raja Ram and Another) by 7th Additional Civil Judge, Junior Division, Gonda, on 22.11.2022. Then he enquired about same from civil court and after obtaining the certified copy of the judgment and decree , filed the appeal alongwith application under section-5 of Limitation Act, which has wrongly and illegally been dismissed without considering that the appellant was not a party in the suit and he has filed the appeal immediately after coming to know about the decree of the trial court. He relies on **N. Balkrishan Vs. M. Krishnamurthy; 1998 (2) JCLR 917 (SC) and Improvement Trust, Ludhiana Vs. Ujagar Singh and Others, 2010 (28) LCD 1531.**
4. Having considered the submissions of learned counsel for the appellant, I have perused the records.
5. The appellant had filed the civil appeal challenging the judgment and decree dated 15.05.2007 passed in Regular Suit No.180 of 1989 (Ram Sundar Vs. Raja Ram and Another) by 7th Additional Civil Judge, Junior Division, Gonda alongwith an application for condonation of delay. The application for

condonation filed by the appellant indicates that he has mentioned that the appellant is the owner and in possession of the land in dispute through a registered sale deed. When he was ploughing his agricultural field on 22.11.2022, the respondent nos.1 to 6 came on the land in dispute and tried to stop the appellant and stated that there is a judgment and decree dated 15.05.2007 passed by the civil court in their favour and on being asked showed a photo copy of the same. Thereafter, the appellant inquired from the court on 23.11.2022 and after arranging the money applied for the certified copy of the judgment and decree dated 29.11.2022, which was provided on 14.12.2022. Then he came to know about the judgment and decree dated 15.05.2007 and thereafter filed the appeal without further delay.

6. The explanation given by the appellant does not seem to be correct and bona fide because the respondent had taken a plea before the lower appellate court that the appeal has been filed against the dead person because the respondent no.6 had already died, therefore, the contention of the appellant in the aforesaid application that respondent no.1 to 6 had stopped the appellant, while he was ploughing, is misconceived and not tenable. Even otherwise, it can not be said to be sufficient explanation for such a long delay of more than 15 years.

7. The learned lower appellate court, after considering the grounds shown by the appellant has recorded a finding that the appellant had knowledge of the judgment and decree passed by the trial court and the appeal was filed with a delay of more than 15 years and accordingly dismissed the appeal. The learned lower appellate court also considered the law enunciated by the Hon'ble Supreme Court and held that the benefit of the said law is available only to the bona fide litigant and not the mala fide litigant.

8. The Hon'ble Supreme Court, in the case of **N. Balkrishan Vs. M. Krishnamurthy (Supra)**, has held that if the explanation does not smack of mala fides or it is not put forth as part of a dilatory strategy, the court must show utmost consideration to the suitor. But when there is reasonable ground to think that the delay was occasioned by the party deliberately to gain time then the court should lean against acceptance of the explanation. While condoning delay the Court should not forget the opposite party altogether. It must be borne in mind that he is a loser and he too would have incurred quiet a large litigation expenses.

9. The Hon'ble Supreme Court, in the case of **Improvement Trust, Ludhiana Vs. Ujagar Singh and Others (Supra)**, has

held that unless mala fides are writ large on the conduct of the party, generally as a normal rule, delay should be condoned.

10. The Hon'ble Supreme Court, in the case of **Lanka Venkateswarlu Versus State of Andhara Pradesh & Ors; (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.

11. 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 (Supra)**, 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 bee

(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."

12. It is settled law that once a decree is passed and the right has been created in favour of the decree holder, it can not be taken away after a long delay in absence of sufficient cause shown by the person who has challenged the same.

13. Adverting to the facts of the case as discussed above, the appellant has failed to give any sufficient ground for such a long delay, rather the explanation also seems to suffer from mala fide as the appeal was filed against the dead person and showing that he had also tried to interfere in possession of appellant and taking knowledge from the said fact. It also smacks of mala fide because the appellant claims to have purchased the land in dispute after about 13 years of the judgment and decree passed by the trial court and filed appeal alongwith application for condonation of delay after about 2 years thereafter with a concocted story, whereas the same was not challenged by his predecessors.

14. In view of above, the substantial justice or liberal approach can not be used to defeat the substantial law of limitation contained in Section 3 of the Limitation Act, that too in a case in which there is inordinate delay and the appellant can not be said to be diligent in approaching the court. It is also to be noticed that in the present case, the appellant had purchased the land in dispute after 13 years of judgment and decree passed by the trial court, which was not challenged by his predecessors, in such case the appellant does not get the right to challenge and get the delay condoned on this ground because it is settled law that it is the duty of the purchaser to verify the title of the seller before sale deed. Even otherwise, the appellant has failed to give sufficient ground.

15. In view of above and considering the over all facts and circumstances of the case, this Court is of the view that the impugned order has rightly been passed by the learned lower appellate court on the application of the appellant, which is reasoned and speaking order and does not call for any interference by this Court as no substantial question of law arises in this case. The appeal has been filed on misconceived and baseless grounds, which is liable to be dismissed.

16. The second appeal is, accordingly, **dismissed**.

(Rajnish Kumar, J.)

Order Date :- 20.11.2024