

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

WP(227) No. 497 of 2020

Dinesh Kumar Jaiswal S/o Late Bhaiyalal Jaiswal Aged About 55 Years
R/o In front Of Shriram Mandir, Manendragarh, District Korea,
Chhattisgarh.

---- Petitioner/ Defendant No.6

Versus

1. Indian Oil Corporation Limited Through- General Manager, 16, Arera Hills, Jail Road, Bhopal, Madhya Pradesh
2. Sr. Divisional Manager Indian Oil Corporation Limited, Raipur Chhattisgarh.
3. Suresh Kumar Jaiswal S/o Late Bhaiyalal Jaiswal Aged About 68 Years R/o Infront Of Shriram Mandir, Manendragarh, District Korea Chhattisgarh.
4. Smt. Radha Jaiswal W/o Late Rajesh Jaiswal Aged About 65 Years R/o Infront Of Shriram Mandir, Manendragarh, District Korea Chhattisgarh.
5. Mahesh Kumar Jaiswal S/o Late Bhaiyalal Jaiswal Aged About 62 Years R/o Infront Of Shriram Mandir, Manendragarh, District Korea Chhattisgarh.
6. Smt. Mamta Jaiswal W/o Mukesh Jaiswal Aged About 50 Years R/o Infront Of Shriram Mandir, Manendragarh, District Korea Chhattisgarh.
7. Smt. Kusum Jaiswal Wd/o Late Ramesh Kumar Jaiswal Aged About 54 Years R/o Infront of Shriram Mandir, Manendragarh, District Korea Chhattisgarh.
8. Pankaj Jaiswal S/o Late Ramesh Kumar Jaiswal Aged About 30 Years R/o Infront of Shriram Mandir, Manendragarh, District Korea Chhattisgarh.
9. Rajesh Kumar Jaiswal S/o Late Bhaiyalal Jaiswal Aged About 53 Years R/o Infront of Shriram Mandir, Manendragarh, District Korea Chhattisgarh.

---- Respondents/ Defendants

For the Petitioner	: Shri Prafull N. Bharat, Advocate.
For Respondents No.1 & 2	: Shri Avinash N. Mishra, Advocate on behalf of Shri Anand Shukla, Advocate.
For Respondent No.9	: Shri Shakti Raj Sinha, Advocate.

Hon'ble Shri Justice Rajendra Chandra Singh Samant

Order on Board

05-04-2021

Heard.

1. This petition under Article 227 of the Constitution of India has been brought being aggrieved by the procedure adopted by the Appellate Court in entertaining the Misc. Civil Appeal No. 3 of 2020 and passing final order dated 18.11.2020.
2. It is submitted by counsel for the petitioner that respondent No.9 – Rajesh Kumar Jaiswal has filed a civil suit, which is registered as Civil Suit No. 32A of 2019. Respondent No.9 also filed an application under Order XXXIX Rule 1 and 2 of the CPC, which was decided and dismissed by order dated 14.1.2020. Respondent No.9 did not file any appeal although, he had a remedy available under Order XLIII Rule 1 of the CPC, within limitation. However, at a later stage, respondent No.9 filed WP(227) No. 404 of 2020 against the order dated 14.1.2020. This writ petition was disposed of by order dated 5.10.2020 and liberty was granted to the petitioner to file an appeal against the impugned order. The appeal under Order XLIII Rule 1 of the CPC was filed by respondent No.9 on 9.10.2020, which was clearly barred by limitation. No application was filed for condonation of delay in filing that appeal and there is only mention in the paragraph 16 of the appeal memo, that the appeal has been filed on the basis of the liberty granted by the High Court in WP(227) No.404 of 2020, therefore, it is within limitation. There had been no order of High Court regarding granting any relief to

respondent No.9 with respect to the limitation, therefore, the appeal was non-maintainable being barred by limitation. Learned Appellate Court without giving consideration to this fact that the appeal was miserably barred by limitation has heard and decided the same by the impugned order, without considering the delay in which the order of trial Court was set aside and a direction was given to decide that application under Order 39 Rule 1 & 2 CPC afresh.

3. Placing reliance on the judgment of Supreme Court in the case of **Sneh Gupta vs. Devi Sarup and Ors.**, reported in **(2009) 6 SCC 194**, it is submitted that the order of the Appellate Court is void, therefore, the impugned order is liable to be set aside.
4. It is submitted by counsel for respondent No.9 that soon after passing the order under Order XXXIX Rule 1 & 2 of the CPC by the trial Court, normal functioning of the Courts were suspended because of the pandemic situation, which is one of the reason that the appeal could not be filed. Therefore, W.P.(227) No. 404 of 2020 was filed, in which this Court granted liberty to respondent No.9 to file an appeal and therefore, on the basis of this liberty, the appeal filed by respondent No.9 was certainly within limitation. It is further submitted that in the case of **Suo Motu Writ Petition (Civil Appeal No.3 of 2020)**. In Re-Cognizance for Extension of Limitation, the Supreme Court by order dated 8.3.2021 has extended the period of limitation prescribed with respect to any suit, appeal, application or proceeding, starting from 15.3.2020 up-till 14.3.2021. Respondent No.9 has also placed reliance on the judgment of Supreme Court in the case of **Sesh Nath Singh and Another vs. Baidyabati Sheoraphuli Co-operative Bank Ltd. And Another** in **Civil Appeal No. 9198 of 2019** decided on 22.3.2021, in which it is held that Section 5 of the Limitation Act does not provide any application which is

required to be filed and there is no such mandate, however, the Court may direct the party to file such application. It is also submitted that in this case it can be deemed, that the learned Appellate Court has condoned the delay in filing the appeal. Hence, the appeal filed may be considered as within limitation in view of the judgment in Suo Motu WP(C) of the Supreme Court or it may be considered that the delay had been condoned by the Appellate Court. Hence, the present writ petition filed is not maintainable.

5. Learned counsel for respondents No.1 and 2 has made formal objection. The other respondents are not represented though notices have been served upon them.
6. Heard counsel for both the parties and perused the documents produced alongwith the petition.
7. Considered on the submissions. It is not disputed that the trial Court had rejected the application under Order XXXIX Rule 1 and 2 of the CPC by order dated 14.1.2020. The direction in the judgment of Supreme Court in Suo Motu Writ Petition is clear that the relief in limitation shall be effective from 15.3.2020 up till 14.3.2021. Therefore, in cases where limitation for filing suit appeal or application was going to expire after 15.3.2020, only those matters will be governed by this order/direction of the Supreme Court. In this case, the order challenged by the respondent No.9 was passed by the trial Court on 14.1.2020. Article 116 of the Limitation Act specifically provides a period of 30 days for filing an appeal against any order passed by the Court before any appellate Court, other than the High Court. Therefore, it is clear that the limitation for filing appeal in the present case had expired in the month of

February, 2020 i.e. much before the date from which the Supreme Court had granted extension of limitation i.e. 15.3.2020, hence, in such a case, the respondent No.9 was bound to pray for condonation of delay by explaining the delay satisfactorily.

8. Respondent No.9 did not file any appeal under Order 43 Rule 1 CPC, instead he filed writ petition bearing W.P.227 No.404/2020, which was disposed off on 5.10.2020 on the ground that the order impugned is appealable. This order dated 5.10.2020 only granted liberty to file appeal and it did not grant any relief in respect of the period of limitation. Hence, the appeal filed by the respondent No.9 subsequent to that date was definitely barred by limitation. It is also clear from the submissions and from perusal of the documents filed, that respondent No.9 made a statement in the appeal memo that the appeal has been filed on the basis of the liberty granted by this Court in WP227 No.404/2020, but no application seeking condonation of delay has been filed. The learned appellate Court has also not given any consideration to this fact in the impugned order that the appeal was time barred and has decided the appeal by order dated 18.11.2020 which is the impugned order. In the case of Sneh Gupta (supra) it has been held by the Supreme Court that any application filed after expiry of period of limitation without filing any application for condonation of delay, cannot be entertained by a Court. The Court has no jurisdiction to entertain any such application in terms of Section 3 of Limitation Act. Reliance was placed on the judgment of Supreme Court in **Sayed Akhtar vs Abdul Ahad** reported in

(2003) 7 SCC 52.

9. The Supreme Court in the case of **Popat Bahiru Govardhane etc vs Special Land Acquisition Officer and another** reported in **(2013) 10 SCC 765** has held in Paragraph No.13 as follows:-

“ It is a settled legal proposition that law of limitation may harshly affect a particular party but it has to be applied with all its rigour when the statute so prescribes. The Court has no power to extend the period of limitation on equitable grounds. The statutory provision may cause hardship or inconvenience to a particular party but the Court has no choice but to enforce it giving full effect to the same. The legal maxim “dura lex sed lex” which means “the law is hard but it is the law”, stands attracted in such a situation. It has consistently been held that, “inconvenience is not” a decisive factor to be considered while interpreting a statute. “A result flowing from a statutory provision is never an evil. A Court has no power to ignore that provision to relieve what it considers a distress resulting from its operation.”

The High Court of Bombay in the case of **Jethmal Himmatmal Jain and Others vs State of Maharashtra** reported in **1981 CrLJ 1813** held that it is incumbent upon the Court taking cognizance of the offence to first consider the question of limitation and if the Court finds that the complaint has been filed after the period of limitation, it would have no jurisdiction to take cognizance and any order passed by the Court would be without jurisdiction unless the Court condones the delay. It is although a pronouncement in a criminal case, but the consideration is on the

law of limitation.

10. Hence, in view of above pronouncements, it is well settled and further looking to the words used in Section 3 of the Limitation Act, which are specific that every suit instituted, appeal preferred and application made after the prescribed period shall be dismissed, although the limitation has not been set-up as a defence, this Court is of the view that the impugned order that has been passed by the appellate Court was clearly without jurisdiction.

11. Accordingly, this petition is allowed. The impugned order of the appellate Court is set aside. However, Misc. Appeal No.3/2020 is restored to its original number. Respondent No.9 is granted liberty to file application for condonation of delay in filing appeal. If any such application is filed by the respondent No.9, the learned appellate Court is directed to consider on the same and decide the same on its own merit in accordance with law.

Sd/-
(Rajendra Chandra Singh Samant)
Judge