

VRJ

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.7366 OF 2004

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Deepak Manaklall Katariya

... Petitioner

V/s.

Hotel Evening Inn. Pvt. Ltd. & Ors.

... Respondents

Mr. Shriram S. Kulkarni for the petitioner.

Mr. Sriraj G. Menon with Dr. Shubham and Mr. Avesh
Ganja i/by Mr. Sriraj G. Menon for respondent No.1.

CORAM : AMIT BORKAR, J.

DATED : NOVEMBER 8, 2023

P.C.:

1. The petitioner is original defendant No.3 against whom Regular Civil Suit No.350 of 1998 was filed seeking a declaration and injunction. The Trial Court on 26th February 2003 decreed the suit.

2. The petitioner applied for certified copy on 25th March 2003. The application for certified copy was completed on 25th March 2003 and the copy was ready on 25th April 2003. The petitioner was called upon to collect the copy on 6th September 2003. According to the petitioner, he received the copy on 6th September 2003 and the appeal was filed on 9th September 2003.

3. Since the appeal was filed without application for

condonation of delay, the respondents raised preliminary objection about maintainability of appeal due to failure to file application for condonation of delay.

4. The Appellate Court relying on section 12(2) of the Limitation Act, 1963 and the provisions of the Civil Manual hold that the period from 25th April 2003 till 6th September 2003 was not requisite time as contemplated under section 12(2) of the Limitation Act, 1963. Sub-section (4) of section 12 of the Limitation Act is relevant for the determination of issue involved which reads as under:

12. Exclusion of time in legal proceedings.—

(1).....

(2).....

(3).....

(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.

5. As per Sub-section (4) of section 12 of the Limitation Act 1963, time requisite for obtaining copy needs to be excluded in the facts of the case based on the statement of clerk handling work of certified copy, on 25th April 2003 the copy was ready. According to him, he reminded the advocate for the petitioner to collect the

copy, however, he doesn't remember on which date. He admits that written intimation was not given to the advocate. In the certified copy it was not written that the copy was ready on 25th April 2003. In the cross-examination, he admits that due to inadvertence the date of copy being ready on 25th April 2003 was not written.

6. On perusal of the statement of the clerk, it appears that there is no material to indicate that the petitioner had knowledge of copy being ready prior to 6th September 2003. In absence of material to indicate that the petitioner had knowledge of copy being ready and in view of averment of the petitioner that 6th September 2003 was the date given to the petitioner to collect the copy, in my opinion, in the facts of the case the period between 25th April 2003 till 6th September 2003 needs to be construed as requisite time under section 12(2) of the Limitation Act, 1963.

7. Even otherwise, the Appellate Court could not have treated petitioner's application as preliminary issue particularly in the facts of the present case. In that view of the matter, in my opinion, it is necessary to hold that the appeal filed by the petitioner is within limitation.

8. Hence, following order:

- a) The impugned order dated 21st April 2004 passed in Civil Appeal No.226 of 2003 is quashed and set aside.
- b) Civil Appeal No.226 of 2003 is restored to the file of the Appellate Court.
- c) The Appellate Court shall decide Civil Appeal No.226

of 2003 on its own merits and in any case within six months from today.

d) Parties shall appear before the Appellate Court on 24th November 2023.

9. The writ petition stands disposed of in above terms. No costs.

10. At this stage learned advocate for the respondents requests for stay of the order. Since the petition is pending here for around twenty years, there should not be further delay. Hence, request for stay of order is rejected.

(AMIT BORKAR, J.)