



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR

SECOND APPEAL NO.361 OF 2019

Appellant : Shri Gajanan s/o Mansaram Beghel
Original Defendant on R.A. Aged about 50 years, Occ. Private,
R/o Plot No.71, Niwas Gruh Nirman Sahakari
Sanstha, Gugali Chowk, Beltarodi Road,
Near Pani Pauch Factory, Nagpur.

- Versus -

Respondents : 1) Tarachand Maliram Jangid,
Original Plaintiff on R.A. Aged about 38 years, Occ. Contractor,
R/o Plot No.82, Ladekar Layout, Manewada,
Nagpur - 440 009.
2) The Collector,
Collector Office, Civil Lines, Nagpur.

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Mr. Sachin Zoting, Advocate for the Appellant.
Mr. R.T. Anthony, Advocate for Respondent No.1.
Mrs. H.S. Dhande, A.G.P. for Respondent No.2.

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CORAM : **M.W. CHANDWANI, J.**
DATE : **14th OCTOBER, 2024.**

ORAL JUDGMENT :

With the consent of learned Counsel for the parties, the
appeal is taken up for final hearing.

02. **Admit.**

03. Correctness of the judgment and decree dated
08/04/2019, whereby the learned District Judge, Nagpur rejected the

application of the appellant for condonation of delay in preferring the first appeal, has been questioned in this second appeal.

04. The following substantial question of law has been framed by this Court vide order dated 17/09/2019:

- *Whether the Court below was justified in rejecting the application for condonation of delay in filing appeal, filed on behalf of the appellant by holding that sufficient cause explaining delay was not made out?*

05. Learned Counsel Mr. Sachin Zoting appearing on behalf of the appellant submitted that there is a delay of 250 days caused in preferring the first appeal. The learned District Judge misconstrued the period while computing the delay in preferring the first appeal. The contention is that the appellant filed an application bearing M.C.A. No.320/2016 for permission to sue as an indigent person in the appeal on 10/03/2016 along with an application for condonation of delay as well as memo of appeal also came to be filed. It was kept pending for more than two years, since the report called from the Tahsildar was not received by the learned District Judge. Considering the personal difficulty and by passage of time, the appellant could arrange some money and therefore, on 29/11/2018 he decided not to press the said application. Consequently, M.C.A No.320/2016 came to

be disposed of and the application for condonation of delay came to be registered on 30/11/2018 as M.C.A. No.908/2018. This aspect has not been considered by the learned first appellate Court and erroneously held that there is a delay of 1253 days in preferring the appeal.

06. Taking his arguments further, the learned Counsel for the appellant submitted that since the appellant is illiterate, he was not aware about the fact that the appeal has to be filed within 30 days from the date of the judgment. Apart from that, he was not communicated by his Counsel about passing of the judgment. According to him, the appellant was working as a Carpenter and was in a position where he could be easily dominated. When the wife of the appellant took continuous follow up, she came to know about passing of the decree and then she tried to file the application before the authority for permission to sue as an indigent person in the appeal, but the same was not accepted on the ground that the Legal Aid Committee does not have sufficient funds. Therefore, the application for condonation of delay of 250 days caused in filing the appeal came to be filed.

07. *Per contra*, learned Counsel Mr. R.T. Anthony appearing

for respondent No.1 submitted that the suit was hotly contested by the appellant and he was well aware about the developments in the suit. Just to get the delay condoned, false reasons have been mentioned in the application. He further submitted that the appellant had also filed another suit against one Alka Ramdas Mane for specific performance of contract claiming his readiness and willing to perform his part of the contract and therefore, the reasons mentioned in the application are not correct. Hence, he supported the judgment of the first appellate Court and sought rejection of the appeal.

08. It is a matter of record that the suit has been decreed by judgment dated 30/04/2015 and the application for condonation of delay along with application for permission to sue as an indigent person came to be filed on 10/03/2016. However, while computing the delay, it appears that the appellant Court included the period for which the application of the appellant for permission to sue as an indigent person was pending before it. The appellate Court while counting the period of limitation did not exclude the period for pursuing the application before the appellate Court for permission to sue as an indigent person and therefore, erroneously calculated the period as 1253 days. In fact, there is a delay of 250 days. Therefore, I find substance in the argument of the learned Counsel for the

appellant that the delay has not been properly counted by the appellate Court. Thus, it is clear that there is a delay of only 250 days in preferring the first appeal.

09. It also appears that the appellant has, on affidavit stated that he was not informed by his Counsel regarding passing of the decree against him. He came to know about passing of the decree and immediately on 19/06/2015, an application for certified copy was moved. It is also contended that the appellant had tried to get the prescribed fees for preferring an appeal from the Legal Aid Committee by filing an application, but the Committee did not accept that application on the ground of insufficient funds and informed that only the certified copy can be provided by the Legal Aid Committee and not the Court fees. Therefore, the appellant moved and an application seeking permission to sue as an indigent person.

10. The learned Counsel for the appellant vehemently submitted that just because the appellant was poor, that cannot be a ground to condone the delay. To buttress his submission, he placed reliance on the decision of this Court in the case of **Kamalbai w/o Narasaiyya Shrimal and another vs. Ganpat s/o Vithalrao Gavare**¹, wherein a ground was taken that due to poverty, the petitioners could

¹ 2007(1) Mh.L.J.807

not prefer an appeal within time. In that case, this Court after recording the fact that various notices were served to the petitioners and even the attachment warrants were issued by the executing Court against them, the petitioners did not raise any objection to the execution proceedings. Thus, the Court held that the petitioners, in that case, were sleeping over their rights inspite of having knowledge of the execution proceedings. In that scenario, it was held that the reasons put forth by the petitioners cannot be treated as “*sufficient cause*” to condone the delay.

11. Here, in this case, it appears that the appellant had earlier approached the Legal Aid Committee. When the Legal Aid Committee showed its inability to provide financial assistance for procuring the court fees, he moved an application with a specific prayer seeking permission to sue as an indigent person in the appeal. Therefore, reliance placed by the learned Counsel for the respondent is not applicable to the case in hand. Rather, there is no ratio holding that poverty cannot be a ground for condonation of delay. The said case was decided on the peculiar facts and circumstances, where the petitioners therein did not take steps for a considerable time even after knowing about issuance of attachment warrants in the execution proceedings.

12. Taking his argument further, the learned Counsel for the respondent submitted that another suit was filed by the appellant, which is still pending before the trial Court. So far as pendency of the suit is concerned, the decision of the Supreme Court in the case of **Ajay Dabra vs. Pyare Ram & Ors** (arising out of S.L.P. (C) No.15793 of 2019), has also been relied upon by the learned Counsel for the respondent, wherein in paragraph 9, the Supreme Court has held as under :

“9. We do not have a case at hand where the appellant is not capable of purchasing the court fee. He did pay the court fee ultimately, though belatedly. But then, under the facts and circumstances of the case, the reasons assigned for the delay in filing the appeal cannot be a valid reason for condonation of the delay, since the appellant could have filed the appeal deficient in court fee under the provision of law, referred above. Therefore, we find that the High Court was right in dismissing Section 5 application of the appellant as insufficient funds could not have been a sufficient ground for condonation of delay, under the facts and circumstances of the case. It would have been entirely a different matter had the appellant filed an appeal in terms of Section 149 CPC and thereafter removed the defects by paying deficit court fees. This has evidently not been done.”

13. However, it is not the case here that the appellant was having a shortage of funds for the time being, otherwise he would

have been able to pay the court fees. The case of the appellant is that he wanted help from the Legal Aid Committee, since he was not having the amount of court fees to file an appeal. Rather, he has filed an application seeking permission to sue as an indigent person, which is another provision that can be availed by the litigant. Here, it is also not the case that the appellant has not availed the provisions of law available to him, which were not availed by the petitioners in the case before the Supreme Court. Therefore, the case of *Ajay Dabra* will not be helpful to the respondent.

14. Considering the reasons mentioned in the application for condonation of delay, I find substance in the argument of the learned Counsel for the appellant that sufficient reason has been explained by the appellant. The Supreme Court as well as this Court in catena of judgments has held that '*sufficient cause*' should be construed liberally. It is not necessary to explain the delay of each day, the cause of delay must be explained properly. This aspect has not been considered by the appellate Court and by calculating the delay of 1253 days instead of 253 days, erroneously rejected the application, which is required to be set aside. The substantial question of law has been answered accordingly.

15. In view of the above, the following order will meet the ends of justice.

ORDER

- I. The second appeal succeeds.
- II. The delay of 250 days in preferring the first appeal is hereby condoned.
- III. The impugned judgment and order dated 08/04/2019 passed by the learned District Judge, Nagpur in M.C.A. No.908/2018 is set aside.
- IV. The first appeal of the appellant be processed according to law by the Registry of the District Court at Nagpur.
- V. Since the suit has been decreed in the year 2015, the first appellate Court shall try to expedite the appeal and dispose of the same at the earliest.
- VI. The second appeal stands disposed of in the above terms with no order as to costs.

(M.W. CHANDWANI, J.)