

**Sunder Lal and anr. Vs. Bhanwar Lal and ors.**

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**Court :** Rajasthan

**Decided On :** Mar-16-1983

**Reported in :** AIR1984Raj74; 1983()WLN189

**Judge :** Dwarka Prasad, J.

**Acts :** [Limitation Act, 1963](#) - Sections 5

**Appeal No. :** Civil Regular First Appeal No. 160 of 1982

**Appellant :** Sunder Lal and anr.

**Respondent :** Bhanwar Lal and ors.

**Advocate for Def. :** H.C. Jain, Adv.

**Advocate for Pet/Ap. :** N.N. Mathur, Adv.

**Disposition :** Application allowed

**Judgement :**

Dwarka Prasad, J.

1. The question, which arises in this case, is as to whether the delay in filing the appeal should be condoned under Section 5 of the Limitation Act. It is not disputed that the appeal was not filed within the time allowed under the Limitation Act, but the learned counsel for the appellant explained that the delay was caused on account of the fact that the court of the Additional District Judge was situated at Raisinghnagar but the case was heard while the learned Judge was holding a camp court at Suratgarh and that applications for certified copies were submitted at Suratgarh and then at Raisinghnagar and finally at Sri Ganganagar, where the Central Record Room of the District Court is situated. Learned counsel submits that there was sufficient cause for the delay. On the other hand, learned counsel for the respondents Nos. 1 to 4 submitted that under the law a valuable right has accrued to the decree-holders and the same should not be lightly interfered with by this Court by condoning the delay and further that even if the earlier lapse on the part of the appellant may not be taken into consideration, yet there was no explanation at all for the delay of two days i.e. 19th and 20th March, 1982, before the appeal came to be filed on 22nd March, 1982.

2. The arguments in the suit were heard by the Additional District Judge on 13th July, 1981 at Suratgarh and thereafter as many as eight dates were fixed for pronouncement of judgment. But the judgment in the suit was pronounced after four

months and 22 days, on Dec. 5, 1981 at Raisinghnagar. The appellant's counsel, who normally resided at Ganganagar, came to know about the judgment of the Additional District Judge on Jan 16, 1982. The application for obtaining the certified copies of the judgment and decree was filed on that very day at Suratgarh but on 28-1-82 the application was rejected on the ground that the same was defective. Another application for certified copies was sought to be produced at Raisinghnagar, but the appellant's counsel was informed by the office of the Additional District Judge that the record has been sent to the Central Record Room at Ganganagar. Therefore, an application for certified copies was submitted at Ganganagar on Feb. 2, 1982 and Feb. 9, 1982 was fixed for giving the certified copies. But that application was rejected on Feb. 4, 1982 on the ground that the record had not been received at Ganganagar. From the documents filed by the appellant it appears that the record was sent from the court of Additional District Judge, Raisinghnagar on January 22, 1982 but it was received by the Record-keeper in the Central Record Room at Ganganagar on Feb. 9, 1982. The counsel for the appellant did not make any inquiry about the fate of his application for certified copies filed on Feb. 2, 1982 for over a month. But when the appellant asked him on March 6, 1982 to find out about the certified copies, it was discovered that the said application for certified copies was already rejected on Feb. 4, 1982. Thereafter another application for obtaining certified copies was filed by the learned counsel for the appellant on March 8, 1982 as March 7, 1982 was a Sunday, certified copies were delivered to the counsel for the appellant on March 17, 1982. The counsel for the appellant gave his affidavit on March 18, 1982 and the appellant's case is that he went to his home town Pilibanga after obtaining the file and affidavit from his counsel, and after making the necessary arrangement for funds, the appellant later left for Jodhpur, reaching there on March 21, 1982 and the appeal was presented on March 22, 1982 in this Court. In a subsequent affidavit filed by the appellant with the rejoinder it was stated that the counsel had sent the copies, affidavit and the file of the case to the appellant at Pilibanga on March 19, 1982 and after arranging for money, the appellant came down to Jodhpur and filed the appeal on March 22, 1982, 21st March being a Sunday.

3. So far as the earlier delay in filing the application for certified copies is concerned, undoubtedly there was lot of confusion. The appeal was heard at Suratgarh, judgment was pronounced at Raisinghnagar, while the record was sent to the Central Record Room at Ganganagar. Moreover, although the record was sent from Raisinghnagar on Jan. 22, 1982, but it reached the Record-Keeper of the Central Record Room at Ganganagar on Feb. 9, 1982 and it was difficult for the appellant to keep track of the record and submit an application for certified copies at one of the aforesaid places during this period. Actually an application for certified copies filed at Raisinghnagar on January 16, 1982 was rejected on Jan. 28, 1982. When another application for copies was sought to be filed there, then the appellant's learned counsel was informed that the record had already been sent to Ganganagar. Thus, an application for certified copies could not be filed there but was later filed at Ganganagar on Feb. 2, 1982. Although Feb. 9, 1982 was fixed for supplying certified copies on the application, it was dismissed by the Officer-in-Charge of the Central Record Room on Feb. 4, 1982 on the ground that the record had not been received at Ganganagar till then. I am unable to understand as to why this application for certified copies was at all rejected. Even if some more time was taken in transit, the application for certified copies should, not have been rejected, more so behind the back of the appellant and his counsel and before the due date. The application should have been kept pending awaiting the receipt of record from Raisinghnagar. The appellant's learned counsel could have brought it to the notice of the Officer-in-charge of the Central Records

that the record had already been despatched from Raisinghnagar. In any view of the matter, application should have been kept pending as the records of the disposed of cases of the month of Dec. 1981 of the court of Additional District Judge, Raisinghnagar were likely to be received in the Central Record Room, if not in Jan. 1982 then at least in Feb. 1982. The rejection of that application led to the filing of another application for certified copies on March 8, 1982 but the copies were actually supplied to the appellant's counsel, Shri P. D. Sharma on March 17, 1983.

4. In view of the aforesaid facts, learned counsel for the respondent also confined his arguments to the delay which was caused after March 17, 1982 in the presentation of the appeal and it was vehemently argued that each day's delay should be explained. Learned counsel for the respondent also sought to take advantage of the discrepancies in the two affidavits filed by the appellant on the question as to whether the certified copies and the file was taken by him from his counsel Shri P. D. Sharma at Ganganagar or it was sent by the aforesaid counsel for the appellant at Pilibanga. Whatever may be the discrepancy in this matter, the appellant's case undoubtedly is that after receiving the certified copies and the file of the case, he went to Pilibanga or that he received the certified copies and the file at Pilibanga on March 19, 1982 and then arranged for money to file an appeal in this Court before proceeding to Jodhpur. It may be that if the appellant would have acted quickly he could have managed to reach Jodhpur at the earliest on March 20, 1982, after obtaining the affidavit of his counsel at Ganganagar on 18th March and then going to Pilibanga and arranging for the necessary funds there on 19th March. But in case the appellant took one more day in making the necessary arrangements of funds for filing the appeal it cannot be held that the appellant acted mala fide or that his conduct was contumacious or that he acted without due care and caution. It may be noticed that Rs. 415/- was to be paid as court-fees on the memo of appeal in this Court and then fees had to be paid to his lawyer. Thus sufficient funds had to be managed by the appellant and that could have taken more than a day to do the same.

5. The principles relating to application of Section 5 of the Limitation Act are well settled. Although, their Lordships of the Privy Council observed in *General Accident Fire and Life Assurance Corporation Ltd. v. Janmahomed Abdul Rahim*, AIR 1941 PC 6 that the provisions of the Limitation Act ought to receive such a construction as the language in its plain meaning imports and the rule has to be enforced even at the risk of hardship to a particular party and the court cannot enlarge the time allowed by law, on equitable grounds; yet Section 5 provides that sufficient cause should be shown by the appellant for the delay. If sufficient cause is shown by the appellant, then the court has a discretionary jurisdiction to enlarge the time for filing an appeal or application.

6. Learned counsel for the respondent placed reliance on the following observations of their Lordships of the Supreme Court in *Ram Lal v. Rewa Coalfields Ltd.*, AIR 1962 SC 361 (Para 7):--

'In construing Section 5 it is relevant to bear in mind two important considerations. The first consideration is that the expiration of the period of limitation prescribed for making an appeal give? rise to a right in favour of the decree-holder to treat the decree as binding between the parties. In other words, when the period of limitation prescribed has expired the decree-holder has obtained a benefit under the law of limitation to treat the decree as beyond challenge, and this legal right which has accrued to the decree-holder by lapse of time should not be light-heartedly disturbed.

The other consideration which cannot be ignored is that if sufficient cause for excusing delay is shown discretion is given to the court to condone delay and admit the appeal. This discretion has been deliberately conferred on the Court in order that judicial power and discretion in that behalf should be exercised to advance substantial justice.'

Thus, although the right which accrued in favour of the decree-holder to treat the decree as binding cannot be lightly interfered with, yet the law deliberately confers a discretion on the court to excuse the delay if sufficient cause is shown and such discretion should always be exercised to advance the cause of substantial justice. Their Lordships approved the following observations made by a learned judge of the Madras High Court in *Krishna v. Chathapar* (1890) ILR 13 Mad 269.

'Section 5 gives the Court a discretion which in respect of jurisdiction is to be exercised in the way in which judicial power and discretion ought to be exercised upon principles which are well understood; the words 'sufficient cause' receiving a liberal construction so as to advance substantial justice when no negligence nor inaction nor want of bona fide is imputable to the appellant.'

7. The same principle was reiterated by their Lordships of the Supreme Court in *Shakuntala Devi Jain v. Kuntal Kumari* AIR 1969 SC 575, wherein the observations of the Madras High Court in *Krishna's* case were again cited with approval and their Lordships held that the words 'sufficient cause' occurring in Section 5 of the Limitation Act must receive a liberal construction so as to advance substantial justice.

8. In *Udayan Chinubhai v. R. C. Bali* AIR 1977 SC 2319, their Lordships of the Supreme Court held that sheer indifference or perhaps negligence, on the part of the Advocate would not deter the court from exercising discretion in condoning the delay. Similarly in *Rafic v. Munshilal* AIR 1981 SC 1400 it was observed by their Lordships of the Supreme Court that in the present adversary legal system, the litigant having selected his advocate, briefed him and paid his fee can remain supremely confident that his lawyer will look after his interest and such an innocent party who has done everything in his power and expected of him, should not suffer for the inaction, deliberate omission or misdemeanour of his counsel. Thus, so far as the initial delay in not making an enquiry in respect of the application for certified copies dated February 2, 1982 until March 6, 1982, the inaction of lawyer, as admitted by him in his affidavit, cannot be attributed to the appellant and is liable to be condoned.

9. Learned counsel for the respondent referred to the decisions of this Court in *Nauratanmal v. Hari Singh* 1951 Raj LW 303 : (AIR 1952 Raj 90) and in *State of Rajasthan v. Ram Nath* 1971 Raj LW 449 : (AIR 1972 Raj 161) for the proposition that each day's delay should be properly explained and a mistake cannot give rise to a sufficient cause entitling the appellant for extension of time. In my view, the appellant has properly explained the delay in the present case and although it may be said that he could have acted with greater diligence and could have filed the appeal at the earliest on March 20, 1982, if he took one more day in arranging for the requisite funds, it cannot be held that there was any inaction or want of bona fides or lack of due care or attention on the part of the appellant. As their Lordships have repeatedly held that 'the words 'sufficient cause' occurring in Sec. 5 should receive liberal construction, so as to advance the cause of substantial justice.' I am inclined in the present case to exercise the discretion to condone the delay under Section 5 of the Limitation Act in favour of the appellant because no negligence or inaction or want of

bona fides is imputable to the appellant. A slow movement on the part of the appellant cannot lead to the inference of want of bona fides or inaction or negligence.

10. Lastly, learned counsel for the respondent urged that as the appellant filed false affidavits, the court should not exercise its discretion in his favour and relied upon the decision of Punjab High Court in the case of State v. Shingara Singh AIR 1963 Punjab 185 wherein it has been held that the court should not consider lightly or with indifference the riling of false affidavits in courts, as the sanctity of oath, on which the efficacy of the administration of justice essentially and basically depends, would be lost thereby. There is no doubt that courts should not lightly ignore the filing of false affidavits. However, in the present case I do not find that there is any deliberate falsehood in the affidavits of appellant as to the discrepancies in the two affidavits filed by the appellant relate to the question as to whether he himself brought the file and the certified copies from the counsel at Ganganagar or the counsel sent the same to the appellant at Piliganga. However, to my mind, it is immaterial as to whether the appellant himself went to Ganganagar on March 18, 1982 and brought the file and the certified copies back to Pilibanga on March 19, 1982 or the aforesaid documents were sent to him at Pilibanga by his counsel on March 19, 1982. In any view of the matter, the fact in accordance with both the affidavits remains that the appellant had the certified copies and the file with him at Pilibanga on 19th March and then he took some time in arranging for funds for court-fee and counsel's fee and other expenses as it was imperative for him to engage a new counsel in the High Court at Jodhpur for the appeal. The court-fee paid on the memo of appeal is Rs. 415/-and thus a substantial sum of money was required by the appellant before he could have filed the appeal in this court. Thus, if one more day's time was taken by the appellant in arranging for the necessary funds, it cannot be held that there was an inaction or want of bona fides or negligence on his part.

11. In the result, the application under Section 5 of the Limitation Act is allowed and the appeal is held to be within time. Let the appeal be now listed for admission.

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