

VEDABAI @ VAIJAYANATABAI BABURAO PATIL

v.

SHANTARAM BABURAO PATIL AND ORS.

JULY 20, 2001

[SYED SHAH MOAMMED QUADRI AND S.N. PHUKAN, JJ.]

Limitation Act, 1963:

S.5—Seven days' delay in filing appeal due to illness of appellant—Appellate Court and High Court declining to condone the delay—Held, in exercising discretion u/s. 5, courts should adopt a pragmatic approach—A distinction must be made between a case where delay is inordinate and a case where delay is of a few days—whereas in the former case consideration of prejudice to the other side will be a relevant factor so the case calls for a more cautious approach but in the latter case no such consideration may arise and such a case deserves a liberal approach—Expression 'sufficient cause' should receive liberal construction and in construing it courts should keep in mind that principle of advancing substantial justice is of prime importance—High Court in exercising jurisdiction u/s. 115, CPC failed to correct the jurisdictional error of the appellate court —Code of Civil Procedure, 1908—S.115.

Interpretation of Statutes:

Expression—"sufficient cause" occurring in S.5 of Limitation Act—Held should be interpreted liberally.

State of West Bengal v. The Administrator, Howrah Municipality & Ors., [1972] 1 SCC 366 and Smt. Sandhya Rani Sarkar v. Smt. Sudha Rani Debi & Ors., [1978] 2 SCC 116, relied on.

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 4494 of 2001.

From the Judgment and Order dated 7.8.2000 of the Bombay High Court in C.R.A. No. 884 of 1999.

A.P. Mayee and Ms. Rucha Mayee for S.V. Tambwkar, for the appellant.

A S.U.K. Sagar, Sanjay V. Kharde and Naresh Kumar for the Respondents.

The following Order of the Court was delivered:

Leave is granted.

B Heard learned counsel for the parties.

This appeal is directed against the order of the High Court of Bombay, Aurangabad Bench in Civil Revision Application No. 884 of 1999 dated August 7, 2000, declining to interfere with the order of the Additional District Judge, Amalner, dated March 16, 1998 dismissing Misc. Civil Application No. C 21 of 1997. The appellant made that application for condonation of delay of 7 days in filing the appeal against the order of the trial court in Special C.S. No. 5/95 on the file of the Civil Judge, S.D. Amalner.

A perusal of the order of the learned Additional District Judge shows that he found fault with the appellant on two grounds: (i) the judgement under appeal was delivered on April 30, 1997 but the application for certified copy was made on June 5, 1997 and (ii) in regard to the averment in the affidavit, filed in support of the application, her illness was given as a reason for the delay; it was pointed out that while she was still ill she filed the appeal. For those two reasons the application to condone the delay of seven days in filing the appeal was dismissed. It appears that the fact that during the period from May 1, 1997 to June 1, 1997 the Court was in vacation, has escaped the attention of the learned Appellate Judge. To avert further delay in filing the appeal as soon as she felt a little better she filed the appeal. This depicts her anxiety to minimise the delay rather than falsity of her case or *malafides*.

F In exercising discretion under Section 5 of the Limitation Act the Courts should adopt a pragmatic approach. A distinction must be made between a case where the delay is inordinate and a case where the delay is of a few days. Whereas in the former case the consideration of prejudice to the other side will be a relevant factor so the case calls for a more cautious approach but in the latter case no such consideration may arise and such a case deserves a liberal approach. No hard and fast rule can be laid down in this regard. The Court has to exercise the discretion on the facts of each case keeping in mind that in construing the expression 'sufficient cause' the principle of advancing substantial justice is of prime importance. In our view in this case, the approach of the learned Additional District Judge is wholly erroneous and his order is unsustainable. It is evident that the discretion under Section 5 of the

Limitation Act is exercised by the Additional District Judge in contravention of the law laid down by this Court, that the expression 'sufficient cause' should receive liberal construction, in catena of decisions (see *State of West Bengal v. The Administrator, Howrah Municipality & Others*, [1972] 1 SCC 366 and *Smt. Sandhya Rani Sarkar v. Smt Sudha Rani Debi & Others*, [1978] 2 SCC 116). The High Court in exercising its jurisdiction under Section 115 C.P.C. failed to correct the jurisdictional error of the Appellate Court. A
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For the aforementioned reasons, we set aside the impugned order of the High Court as well as also of the Additional District Judge, Amalner (the Appellate Court), condone the delay of seven days in filing the appeal, restore the appeal to the file of the Additional District Judge and direct the learned Additional District Judge, Amalner to decide the appeal on merits. C

The appeal is accordingly allowed. No. costs.

R.P.

Appeal allowed.