

IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

Civil Revision No.16 of 2024

Date of decision: 19.07.2024

Harnam Singh.

...Petitioner.

Versus

Champa Devi.

...Respondent.

Coram:

Ms. Justice Jyotsna Rewal Dua, Judge.

Whether approved for reporting?¹

For the petitioner : Mr. Vishal Thakur, Advocate.

For the respondent : Mr. Sunil Mohan Goel, Advocate.

Jyotsna Rewal Dua, Judge

Respondent's first appeal against the judgment & decree passed by the learned Trial Court, was barred by limitation. Application moved by her under Section 5 of the Limitation Act was allowed and the delay in institution of the appeal was condoned by the learned First Appellate Court. The order condoning the delay of 170 days in institution of the first appeal has been assailed by the petitioner/defendant in this civil revision petition.

2. Facts.

2(i). The respondent had instituted a civil suit for declaration to the effect that a registered Will executed by her

¹ *Whether reporters of Local Papers may be allowed to see the judgment? Yes*

father-Sh. Atma Ram on 07.10.1983 in favour of the present petitioner was illegal, inoperative, null & void, and sham document having no impact upon her rights.

2(ii). The civil suit instituted by the respondent on 27.05.2015 against the present petitioner was dismissed by the learned Trial Court on 22.02.2022.

2(iii). The respondent preferred an appeal against the aforesaid judgment and decree passed by the learned Trial Court before the learned First Appellate Court. Her appeal was barred by 170 days. An application was moved by her under Section 5 of the Limitation Act for condonation of delay in filing the appeal. Learned First Appellate Court allowed the application on 04.12.2023.

2(iv). Feeling aggrieved against the order dated 04.12.2023, petitioner/defendant has instituted this revision petition under Section 115 of Civil Procedure Code.

3. Heard learned counsel on both sides and considered the case file.

4. Consideration.

4(i). It is a matter of record that the judgment and decree dismissing the suit instituted by the respondent was

passed on 22.02.2022. It is also a fact that the first appeal preferred by respondent was barred by 170 days.

4(ii). Learned First Appellate Court considered the the explanation given by the respondent for the delay taken by her in instituting the appeal. The reasons were that the respondent is a diabetic patient and also suffering from radiculopathy. The respondent had also placed on record some documents in form of prescription slips and medical documents along with the application in support of the grounds urged for condoning the delay. It was pleaded by her that she was undergoing treatment for her diseases, was also under treatment of physiotherapist during the period in question and for that reason could not consult her counsel for instituting the appeal within the prescribed limitation and for that reasons delay had occasioned.

4(iii). While contesting the impugned order and opposing the condonation of delay, learned counsel for the petitioner/defendant relied upon ***Pathapati Subba Reddy (Died) by L.Rs. and Others vs. Special Deputy Collector***

(LA)², wherein the principles of law of limitation were culled out as under:-

“26. On a harmonious consideration of the provisions of the law, as aforesaid, and the law laid down by this Court, it is evident that:

(i) Law of limitation is based upon public policy that there should be an end to litigation by forfeiting the right to remedy rather than the right itself;

(ii) A right or the remedy that has not been exercised or availed of for a long time must come to an end or cease to exist after a fixed period of time;

(iii) The provisions of the Limitation Act have to be construed differently, such as Section 3 has to be construed in a strict sense whereas Section 5 has to be construed liberally;

(iv) In order to advance substantial justice, though liberal approach, justice-oriented approach or cause of substantial justice may be kept in mind but the same cannot be used to defeat the substantial law of limitation contained in Section 3 of the Limitation Act;

(v) Courts are empowered to exercise discretion to condone the delay if sufficient cause had been explained, but that exercise of power is discretionary in nature and may not be exercised even if sufficient cause is established for various factors such as, where there is inordinate delay, negligence and want of due diligence;

(vi) Merely some persons obtained relief in similar matter, it does not mean that others are also entitled to the same benefit if the court is not satisfied with the cause shown for the delay in filing the appeal;

(vii) Merits of the case are not required to be considered in condoning the delay; and

(viii) Delay condonation application has to be decided on the parameters laid down for condoning the delay and condoning the delay for the reason that the conditions have been imposed, tantamounts to disregarding the statutory provision.”

²2023 SCC OnLine SC 513

Hon'ble Apex Court in the above extracted principles has also held that in order to advance substantial justice, though liberal, justice-oriented approach and cause of substantial justice is required to be kept in mind, however, the same cannot be used to defeat the substantial law of limitation contained in Section 3 of the Limitation Act. Section 3 has to be construed in a strict sense, wherein Section 5 has to be construed liberally.

4(iv). In the instant case, respondent had filed the appeal against the judgment and decree passed by learned Trial Court dismissing her civil suit. The First Appellate Court was the last Court of facts available to her. The respondent has established sufficient and cogent reasons for not being able to institute the appeal within permissible period. Learned counsel for the petitioner/defendant has also not disputed the fact that respondent/plaintiff was actually suffering from the diseases as pleaded by her in the application. The given facts of the case called for the justice-oriented and liberal approach. The exercise of discretion by the learned First Appellate Court under the impugned order, in condoning the delay of 170 days in institution of the

appeal, therefore cannot be said to be suffering from illegality or material irregularity so as to warrant interference under Section 115 of the CPC. The discretion has been exercised by the learned First Appellate Court in accordance with law and on the basis of pleadings and documents on record. Hence, no material irregularity or illegality was committed by the learned First Appellate Court in allowing the application for condoning the delay in filing the first appeal.

5. Resultantly, no interference is called for in the impugned order dated 04.12.2023. Hence, finding no merit in the petition, the same is dismissed. Pending miscellaneous application(s), if any, shall also stand dismissed.

19th July, 2024
(Pardeep)

Jyotsna Rewal Dua
Judge