

Chander Bhan

Vs

Bal Mukund and Another

Civil Appeal No. 1664(N) of 1970

(K. S. Hegde, P. Jagmohan Reddy, K. K. Mathew JJ)

20.01.1972

JUDGMENT

HEGDE, J. -

1. There is no substance in this appeal. The Appellant claims to be a sub-tenant under the first Respondent who is a tenant under the second Respondent. The second Respondent filed a petition for evicting the appellant and the first Respondent from the suit premises on certain grounds. His application was rejected by the Rent Controller. But in appeal, the Rent Control Tribunal reversed the Order of the Rent Controller and decreed the second Respondent's claim. Thereafter, the appellant filed a second appeal before the High Court of Delhi on April 28, 1969. Under the rules of the High Court the Appellant was required to file along with his appeal memo, the judgment and decree appealed against as well as the judgment of the trial court. At the time of the filing of the appeal, none of these documents were filed, but an application was made to the High Court to dispense with the production of those documents. The High Court ordered that those documents should be produced within the time prescribed for filing the appeal. It appears that the judgments and decree of the first Appellate Court was produced before the High Court on July 15, 1969, though the High Court had re-opened after summer recess on July 14, 1969, but the judgment of the trial court was not produced at all. No explanation appears to have been given before the High Court as to why the judgment and decree of the first Appellate Court was not produced in time. The last date for filing the appeal admittedly was July 14, 1969. As mentioned earlier, the decree and judgment of the first Appellate Court had not been produced by that time. Hence the appeal was prima facie barred. No application under Section 5 of the Limitation Act had been made and no reason had been shown as to why there was a delay in filing those documents. Hence, the High Court was fully justified in dismissing the appeal on the ground that the same is barred by limitation.

2. It was urged by the learned counsel for the appellant that though his client had applied for the copies of the decree and judgment of the first Appellate Court as well as that of the trial court on the very date, it decided the appeal, that Court made available only the decree and judgment of the first Appellate Court and not that of the Trial Court. Hence, the Appellant was entitled to file the second appeal after the same was made available to. This plea is an entirely new plea. No such plea appears to have been taken before the High Court. This plea is not founded on any material before us. Hence, it cannot be sustained.

3. In the result, this appeal fails and the same is dismissed. No costs.

</html