

Sadhu Muktajivendasji Guru Ishwar Dasji

Vs

Acharya Sri Devendra Prasadji B. Prasadji Pande (Died) By Lrs..

Civil Appeal Nos. 2146-2149 of 1966

(G. K. Mitter, K. S. Hegde, P. Jagmohan Reddy JJ)

17.03.1972

JUDGMENT

HEGDE, J. -

1. These appeals are filed by the original plaintiff. They are brought to this Court after obtaining special leave from this Court. The only question that arises for decision in these appeals is whether the delay in filing the applications for setting aside the orders of dismissal of the suits for default should be condoned and the two suits instituted by the appellant should be restored to file. The short facts of the case are these. The plaintiff filed two suits before the Civil Judge, Ahmedabad. Some witnesses were examined on behalf of the plaintiff and the suits stood posted for trial on February 5, 1953. On the date the plaintiff's witnesses were not present in court. The plaintiff's counsel requested for adjournment of the trial of the case. The adjournment asked for was refused. Thereafter the plaintiff's counsel withdrew from the cases and the suits were dismissed for non-prosecution. On the same day the counsel for the plaintiff filed two applications for restoration of the suits. Therein he alleged that the agent of the plaintiff who was in charge of the cases was under the impression that the suits had been posted to a different date and consequently he was not able to get the witnesses. These applications were pending till July 10, 1956. Meanwhile, evidently as a measure of safety, the plaintiff filed two appeals before the District Court, Ahmedabad on March 21, 1953, against the orders dismissing the suits. These appeals were dismissed on July 27, 1955, on the ground that they were not validly instituted. The District Judge came to the conclusion that the counsel for the plaintiff had no authority to institute those appeals as he had withdrawn from the suits. Thereafter the Civil Judge dismissed the applications made by the plaintiff for the restoration of the suits on July 10, 1956, on the ground that those applications were not properly instituted. This ended one chapter in the litigation. Thereafter another chapter began on August 8, 1956. The plaintiff filed two more applications for setting aside the order of the dismissal of the suits and to restore them to file. These applications were filed by the plaintiff himself. It is said that the plaintiff was away from India during the earlier period. Two more appeals were also filed before the District Judge by the plaintiff challenging the order of dismissal made by the Civil Judge on February 3, 1953. The District Judge dismissed those appeals on April 22, 1957. Thereafter the Civil Judge dismissed the applications made on February 22, 1958. As against these orders the plaintiff went up in revision to the High Court. The High Court set aside the orders of the court below and remanded the cases to the trial court for going into the question whether the delay in filing the applications should be condoned and further if the delay should be condoned whether the suits should be restored to file. By this time the City Civil Court had begun to function in the city of Ahmedabad. Hence, the applications in question stood transferred to that court. The City Civil Judge came to the conclusion that in the circumstances of the case the delay in filing the applications for setting aside the order of dismissal should be condoned and the suits should be restored to file. But in coming to that

conclusion he was of the opinion that the only delay he need condone was that up to July 10, 1956 and the remaining 30 days there is no need to condone as those days are available to the plaintiff for filing the application to set aside the order of dismissal.

2. As against the orders of the City Civil Judge the defendant went up in revision to the High Court. The High Court did not disagree with the trial court on the question that there were sufficient grounds to condone the delay. It came to the conclusion that the delay was properly condoned up to July 10, 1956. Differing from the trial court it came to the conclusion that the plaintiff was not entitled to the remaining 30 days for filing the application to set aside the orders of dismissal. It took the view that under law the plaintiff was not entitled to have another 30 days after July 10, 1956, for filing the applications in question. On this technical view of the matter it reversed the decision of the trial court and dismissed the application and consequently the suits also stood dismissed.

3. In our opinion the High Court has taken a highly technical view of the matter. It is clear from the order of the learned trial Judge that he was of the opinion that these were eminently fit cases for condoning the delay in filing the application for setting aside the orders of dismissal. His view of the law that the plaintiff could have the benefit of 30 days for filing those applications from July 10, 1956, may be right or wrong. We do not propose to go into that question. But one thing is clear from the order of the trial Judge that he did consider that the facts of the case are such as to justify the condonation of delay in filing the application and we agree with that view. The facts of the case speak for themselves and in our opinion the trial Judge was fully justified in condoning the delay in filling the applications to set aside the order of dismissal.

4. In the result we allow these appeals, set aside the orders of the High Court and restore that of the trial court. But in the circumstances of these cases we make no order as to costs.

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