

Hans Raj and Others

Vs

Sundar Lal Aggarwal and Others

Civil Appeal No. 1745 of 1980

(R. S. Sarkaria, A. C. Gupta, E. S. Venkatramiha JJ)

20.07.1980

JUDGMENT

SARKARIA, J. –

1. Special leave granted.

2. Having heard the learned counsel on both sides we allow this appeal and set aside the impugned judgment on the short ground that the High Court does not appear to have applied its mind at all to the averments made in the application under Section 5, Limitation Act filed in R. F. A. No. 1 of 1962. As is apparent from the impugned judgment of the Letters Patent Bench, it was labouring under the mistaken impression that in that application "no ground for condonation of delay was mentioned". We therefore send the case back to the Appellate (L. P.) Bench of the High Court with the direction that it should restore the L. P. A. to its original numbers, apply its mind to the averments made in the application dated August 4 1973 under Section 5 of the Limitation Act in R. F. A. No. 1 of 1962 as well as to the affidavit, if any, in support of those averments. It was contended as to the affidavit, if any, in support of those averments. It was contended before us by Shri Shanti Bhusan, the learned counsel for the respondent, that the application under Section 5 of the Limitation Act was not supported by any independent affidavit and that was a fatal flaw. The High Court shall, inter alia, consider this contention also and therefore first dispose of these applications i.e. one under Order 22, Rule 4 of the Code of Civil Procedure and the other under Section 5 of the Limitation Act and then in the light of that disposal, decide these appeals afresh, if possible within two months from the date of the receipt of the record. Costs will abide the result in the High Court.

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