

**SUPREME COURT OF INDIA**

Prakash Seshmal Jain

Vs.

Sukhmal & Sons

(S Agrawal, S Ahmed and M Srinivasan JJ.)

13.04.1998

**ORDER**

1. Special leave granted.
2. By the impugned judgment the High Court has dismissed the letters patent appeal filed by the appellant on the ground of interference of record.
3. The facts, briefly stated, are as follows:

The appellant had filed OJ Appeal No. 53 of 1987 in the High Court against the order of the learned Single Judge dated 9-10-1987. The memo of appeal was filed in the Registry of the High Court on 12-11-1997. An objection was raised by the office that it was barred by limitation. The memo of appeal did not contain a prayer for condonation of delay in filing the appeal. In view of the objection that was raised by the office the counsel for the appellant on 13-11-1997 added a prayer in the memo of appeal vide para 14(g) which reads as follows:

"Be pleased to condone the delay of 3 days in filing this appeal."

When this fact was brought to the notice of the Division Bench of the High Court, the Court felt that this course of action was not permissible since the correction had been made in the memo of appeal after it had been filed without obtaining permission of the Court. An unconditional apology was tendered by the Advocate-on-Record of the appellant before the learned Judges. The said unconditional apology has been accepted by the Court in the impugned judgment. But at the same time the appeal has been dismissed on the ground of interference of record.

4. We have heard Shri D.A. Dave, the learned Senior Counsel appearing for the appellant and Shri R.F. Nariman, the learned Senior Counsel appearing for Respondents 1 to 3.

5. Having regard to the fact that the High Court had accepted the unconditional apology tendered by the Advocate-on-Record in the matter of his adding a prayer for condonation of delay in the memo of appeal after it had been filed, we are of the opinion that the High Court should not have dismissed the appeal. As a result of the dismissal of the appeal, the appellant, who had no role, has been made to suffer on account of a fault on the part of the advocate in respect of which the Court has accepted the unconditional apology of the advocate.

6. Shri Nariman has, however, submitted that the appeal filed by the appellant before the High Court was not maintainable and in the facts and circumstances of the case the learned Single Judge has rightly condoned the delay and there was no merit in the appeal. These are matters which can be agitated by the respondents before the High Court.

7. The appeal is allowed, the impugned judgment dismissing the appeal is set aside and the said appeal is restored and remitted to the High Court for consideration. No costs.