

SUPREME COURT OF INDIA

Jagdish Sawhney

Versus

Harbans Singh

(S. Rajendra Babu and D.P. Mohapatra, JJ.)

Civil Appeal No. 5106 of 2000 (Arising out of S.L.P. (C) No. 4169 of 2000).

19.09.2000

JUDGMENT

S. Rajendra Babu, J. - Leave granted.

2. A suit was filed by Darshan Singh, Iqbal Singh, Gurjinder Singh, Ranjit Singh, Harbinder Singh and Harbans Singh against Hardeep Singh, Kuldip Singh, Jagir Kaur, Surinder Singh, Baldev Singh and Sukhdev Singh for a declaration that the plaintiffs are the shareholders of the transport company, New Janta Bus Service Private Limited, Batala having duly acquired the shares of the company from the previous shareholders and having the present share holdings as set forth in the plaint and that the defendants have no right, title or interest in the same and in respect of the premises, office building, equipment and other properties mentioned in the schedule thereto. After notice, the defendants resisted the said suit on various grounds in their written statement. Issues were raised. On 28.2.1995 as none was present on behalf of the defendants the suit was proceeded *ex parte* and plaintiffs were asked to lead evidence. On consideration of that evidence the trial Court made a decree *ex parte* as claimed in the plaint. While the suit was pending temporary injunction under Order 39 Rules 1 and 2 had been granted in the said suit restraining the defendants from alienating the assets of the company. On the allegation that temporary injunction had been violated, an application under order 39 Rule 2-A was filed to which the appellant had been impleaded as respondent though he was not a party to the suit. That application was pending when the suit was decreed.

3. An appeal was filed by the appellant against the decree made by the trial Court in the suit along with two applications one under Section 5 of the Limitation Act for condonation of delay in filing the appeal and the other for permission to file appeal. The appellant averred in the first application that he came to know about the decree only on 2.2.1996 when his authorised representative went to inspect the record in the office of Registrar of Companies, Jalandhar and thereafter he took prompt steps to obtain certified copies of the judgment and decree and filed the appeal on 9.2.1996 thus explaining the delay in preferring the appeal. In the second application, the applicant alleged that the plaintiffs and defendants in the suit had colluded with each other in getting the decree passed to his detriment and hence the application for permission to prefer appeal is filed. That application is still pending consideration.

4. By consent of the parties the application for condonation of delay was taken up for consideration. The fact that the appellant was not a party to the suit weighed with appellate court very heavily. Indeed, a contention was put forth before the appellate court, as has been done before us, that the appellant was aware of the proceedings of the suit and the decree passed in that case; that he was aware of the suit proceedings; that he was a party to contempt proceedings initiated under Order 39 Rule 2-A CPC; that he was personally attending to the contempt proceedings, and that Shri S.K. Gupta, Advocate had been appearing on his behalf in the contempt application. The attention of the court was drawn to documents Ex. R-3 to Ex. R-15 which would indicate that the appellant had been appearing in contempt proceedings either by himself or through his advocate Shri S.K. Gupta and he had filed a reply to the contempt petition on 15.9.1995 and, therefore, he must have come to know about the passing of the decree passed on 31.8.1995 and thus an inference must be drawn that he was well aware of the passing of the decree but in spite of that he failed to file the appeal in time and, thus, application for condonation of delay was liable to be dismissed by the court. If the statement of the appellant that he came to know of passing of the decree only on 2.2.1996 is true, then certainly the delay in filing the appeal had been duly explained and there was sufficient reasons preventing him to file the appeal before that date. Though evidence had been let in by either side before the appellate court on the application of condonation of delay, there has been no evidence to the fact that the appellant had become aware of the passing of the decree on 31.8.1995 prior to 2.2.1996. The appellate Court felt the mere fact that he appeared in the contempt proceedings does not necessarily lead to the inference that he should be presumed to know about the passing of the decree. It was observed that the decree had been passed on 31.8.1995 and thereafter only two or three adjournments appeared to have been given on 15.9.1995 and 20.12.1995 and probably he might not have known about the passing of the decree. The suit was contested by Hardeep Singh and others and thereafter they absented themselves from the court and the suit proceeded *ex parte*. Thus the appellate court concluded that the appellant had not become aware of the passing of the decree prior to 2.2.1996 and, therefore, he allowed the application for condonation of delay. On a revision being preferred, the High Court noticed difference in the statement made in the application filed for condonation of delay before the appellate court which was to the effect that the representative of the appellant had gone to the office of the Registrar of Companies at Jalandhar for inspection of the file and then he came to know about the decree and in the statement made before the court wherein he stated that he along with his Chartered Accountant had gone to the office of the Registrar of Companies on 2.2.1996 and on inspection of the file he came to know about the decree having been passed. This inconsistency belied the manner in which he became aware about the decree against which he preferred the appeal. His appearance in the contempt proceedings also weighed with the High Court. Thus, the High Court allowed the revision petition, set aside the order of the appellate Court and dismissed the application for condonation of delay. That order would result in dismissal of his appeal. Hence this appeal by special leave.

5. What had been stated in the application or before the Court as to the manner in which the appellant came to know of the decree of the court is in substantial agreement with each other. Whether he came to know on his own inspection or

through the inspection of his representative or by joint inspection or through the Deputy Registrar of the Companies, the fact remains that he came to know of the decree having been passed only on 2.2.1996. That is that essence of the matter.

6. This factor is highlighted by the learned Counsel for the respondents again before us in these proceedings and he strongly contended that a person who makes inconsistent statements should not be encouraged at all, much less in a proceeding arising under Article 136 of the Constitution. We do not think so. The appellate court has given cogent reasons to come to the conclusion that there were justifiable reasons for the appellant not to prefer the appeal prior to 2.2.1996. We agree with the same. The decisions referred by the learned Counsel for the respondent in ***Binod Bihar Singh v. Union of India, AIR 1993 SC 1245*** and ***P.K. Ramachandran v. State of Kerala and another, JT 1997(8) SCC 189 : 1997(4) RRR 242 (SC)***, would not be of much materiality in the present case.

7. The High Court ought to have accepted the finding as to sufficiency of cause in explaining the delay to prefer the appeal and should not have interfered with the same that too in a proceeding under Section 115 CPC, the scope of which is very limited, the power of the court to interfere being only in cases of error of jurisdiction resulting in miscarriage of justice. We find no such infirmity in this case.

8. Therefore, the order passed by the High Court is set aside and the order made by the learned District Judge in appeal allowing the application of condonation of delay is restored. But in the circumstances of the case, there shall be no order as to costs.

Order accordingly.