

SUPREME COURT OF INDIA

Dhan Kumar

Vs.

Iqbal Hussain

S.L.P.(C) No.19977 of 2002

(Arijit Pasayat and C. K. Thakker JJ.)

06.09.2004

JUDGMENT

Arijit Pasayat, J.

Heard learned counsel for the parties.

1. Leave granted.

2. The application filed in terms of Order XXII, Rule 9 of the *Code of Civil Procedure, 1908* (in short 'the CPC') read with Section 5 of the *Indian Limitation Act, 1963* (in short 'the Limitation Act') was rejected. The appellant's father had filed an appeal in the Court of District Judge, Guna, Madhya Pradesh. He died on 09.01.1991. Thereafter, the application in terms of Order XXII, Rule 9 CPC came to be filed on 02.10.1991. The explanation offered for the delay was that the appellants had no knowledge about the pendency of the appeal and, therefore, they could not take steps earlier. The plea was resisted by the respondent in the appeal before the District Court on the ground that no satisfactory explanation has been offered. The District Court accepted the plea of the respondent and rejected the application filed. The High Court, by the impugned judgment, affirmed the view of the District Court.

3. Learned counsel for the appellants submitted that all that was possible to be done, had, in fact, been done in the courts below. The photostat copy of the letter on the basis of which subsequent action was taken, was filed. It was explained as to how the appellants filed the application the moment they came to know about the pendency of the appeal. Learned counsel for the respondent submitted that two courts have come to the conclusion that the plea set up by the appellants is not tenable and these being findings of fact, should not be interfered with.

4. We find that the plea taken by the appellants and the materials placed were not really inadequate to support their stand. That being so, the technical view, as adopted, should not have been taken about the non-production of the original letter. The courts below should have accepted prayer of the appellants. Be that as it may, the respondents have been put to

unnecessary expenses by fighting litigation. The costs of Rs.5, 000/- would meet the ends of justice. The amount of Rs.5, 000/- as costs shall be paid within four weeks from today. On the amount being paid, the appeal shall be restored by the District Court and the application in terms of Order XXII, Rule 9 read with Section 5 of the Limitation Act shall be allowed and the proper parties shall be impleaded in terms of the application.

The appeal is disposed of accordingly.