

27.03.2023

Present: Sh Somesh Gandhi Ld Counsel for appellant.
Sh. Mrityunjay Kumar Ld Counsel for respondent no 1.
Sh S K Bansal Proxy Counsel for Sh V K Aggarwal Ld Counsel for
respondent no 8.
None for other respondents.

Ld Counsel for the appellant has filed certified copy of the appeal i.e.
MCA No 25/2019. Copy supplied.

Ld Counsel for respondent no 1 has filed reply to the appeal as well as
reply to the application u/s 5 of the Limitation Act. Copy supplied.

Arguments heard on the application u/s 5 of the Limitation Act.

List for orders at 4:00 PM.

(Ajay Gulati II)
ADJ-01 (Central)
THC, Delhi/27.03.2023

AT 4:00 PM.

Present: None.

The present appeal has been filed u/s 341 Cr.P.C. against the impugned
order dt 06.05.2019. The appeal is also supported with an application u/s 5 of the
Limitation Act seeking condonation of delay in filing the present appeal.

The present appeal has been filed on 07.10.2020 and it is stated that the
appellant herein had earlier filed an appeal against the said order on 02.07.2019 in
Central District, however inadvertently the said appeal got listed before the Court in
West District (bearing registration number as MCA No 25/2019) however on
realizing that the appeal has been filed in wrong jurisdiction therefore the same was

allowed to be withdrawn with liberty to file afresh before the appropriate Court vide order dt 06.03.2020.

It is further stated that the said Court had given 30 days' time to file the appeal before the appropriate Court but the same could not be filed within the given time which got expired on 04.04.2020 since at that time Covid-19 pandemic was pervasive. It is also submitted that the Hon'ble Supreme Court of India in the *Suo-moto WP (C) 3/2020* had also suspended the limitation from 15.03.2020 to 28.02.2022 and therefore the present appeal is within limitation.

On the other hand, Ld Counsel for respondent no 1 has vehemently argued that the appellant is guilty of misleading the Court since a bare perusal of the certified copy of the earlier appeal i.e. MCA No 25/2019 clearly shows that though the said appeal was filed in Central District but there is a cutting at the place where Central District is written and instead of Central District, West District has been written by-hand which clearly shows that it was a deliberate act of the appellant to file the said appeal before the West District and as such it cannot be said that the said appeal got listed before West District inadvertently. It is also contended on behalf of the respondent no 1 that the said court had given 30 days' time to file the appeal before appropriate Court but the appellant chose to sleep for almost 5 months and the present appeal has been filed in October 2020 which also shows that the appellant is not at all diligent in prosecuting his remedies and therefore the application seeking condonation of delay is liable to be dismissed.

Having gone through the record, it is seen that the order dt 06.05.2019, which is challenged in the present appeal, was also challenged by the appellant herein by filing an appeal i.e. MCA No 25/2019 and the said appeal got listed before the Ld ADJ-06, West District and when the appellant realized the said mistake, he sought to withdraw the said appeal and as such vide order dt 06.03.2020 the said appeal was allowed to be withdrawn and the following order was passed:

“Considering the totality of facts and circumstances and also the statement of appellant, the present appeal is dismissed as withdrawn with liberty to appellant to file the fresh appeal before the appropriate court having jurisdiction in the matter as per law.

Since there is a formal defect in the filing of the present appeal hence, appellant would be entitled for the benefit of Section 14 of Limitation Act, 1963, if the appeal is filed within a period of 30 days from today before appropriate court.”

It is also a matter of record that the appellant was granted 30 days’ time from 06.03.2020 to file the appeal afresh before the appropriate court however the present appeal has been filed only on 07.10.2020.

It shall not be out of place to mention here that the Hon’ble Supreme Court of India in *Suo Moto* WP (C) 3/2020 has directed that the period of limitation for initiating any proceeding shall be excluded from 15.03.2020 till 28.02.2022 and since the present appeal was filed during the said period i.e. on 07.10.2020 and as such there can be no iota of doubt that the period from 06.04.2020 till 07.10.2020 has to be excluded from being counted for the purposes of limitation in the present case.

In view of the above, the delay in filing the present appeal is condoned and the application is disposed of accordingly.

List for arguments on the appeal on **24.07.2023**.

(Ajay Gulati II)
ADJ-01 (Central)
THC, Delhi/27.03.2023