

In the Court of S.C. Kainthla, District Judge, Sirmaur District at Nahan,HP.

Prem Dutt Vs. Sita Devi & Ors
No. 5-CM/6 of 2017.

22.11.2018

Present: Sh. N.S. Thakur, Adv. Id. Counsel for applicant.
Sh. Manish Jain, Adv. Id. Counsel for the respondents.

ORDER:

The applicant is seeking condonation of delay in filing the appeal.

2. It is the averments of applicant that he has filed an appeal under Section 96 of Code of Civil Procedure against the judgment and decree dated 11.8.2016, passed by learned Civil Judge(Senior Division), Nahan. It is further averred that the applicant came to know about the impugned judgment and decree on 21.11.2016 when he visited patwar khana for obtaining the revenue papers from the Patwari and it was disclosed by the Patwari that land of the share of the applicant has been incorporated in the name of his daughters also and thereafter, he contacted his counsel and also filed an application for obtaining the copy of judgment and decree and after obtaining the copy of impugned judgment and decree, he has filed the present appeal. It is further averred that the delay of about four months in filing the appeal is beyond the control of the applicant as the applicant was neither disclosed by his counsel about the passing of impugned judgment and decree nor any intimation was given to the applicant in this regard and as such, the delay in filing the appeal is liable to be condoned.

3. The application so filed has been contested by the respondents by filing reply admitting therein that the impugned judgment

and decree was passed by learned Civil Judge (Senior Division), Nahan on 11.8.2016, but it is denied that the applicant has no knowledge about the impugned judgment and decree till 21.11.2016. It is averred that the impugned judgment and decree was passed as per consent/wish of the parties as the case was sent for mediation before Mediator Shri Mohd. Iqbal, Advocate and the statements of the parties were recorded by the learned trial court on 10.8.2016 and thereafter, the case was adjourned to 11.8.2016, on which date the statements of some other parties were also recorded and the impugned judgment and decree was passed on 11.8.2016 to the knowledge of the applicant. It is denied that the applicant was prevented by sufficient reasons from filing the appeal within a period of limitation and averred that there are no sufficient grounds for condoning the delay and the impugned judgment and decree has been passed on the basis of compromise effected between the parties.

4. No rejoinder was filed on behalf of the applicant.

5. On 6.10.2017, out of the pleadings of the parties, the following issues were framed :-

1. Whether there are sufficient grounds to condone the delay in filing the appeal?

OPA

2. Relief.

6. I have heard learned counsel for the parties and have also gone through the record of the case carefully.

7. For the reasons to be recorded hereinafter while discussing the issues for determination, my findings on the same are as under:-

Point No.1	:	No
Final Order	:	The application is dismissed as per operative part of the order.

REASONS FOR FINDINGS.

ISSUE NO.1

8. It is not a disputed fact that the impugned judgment and decree was passed by learned trial court on 11.8.2016; whereas, the present appeal has been filed by the applicant on 9.12.2016 after a period of about four months from the date of passing of the impugned judgment and decree. As per Article 116 of the Schedule attached to Limitation Act, a period of 30 days has been prescribed as a period of limitation to be computed from the date of decree for filing an appeal under the Code of Civil Procedure before this Court and it is an admitted fact that the appeal filed by the applicant is beyond the period of limitation. Section 5 of Limitation Act provides that any appeal or any application, other than an application under any of the provisions of Order XXI of the Code of Civil Procedure, may be admitted after the prescribed period, if the appellant or the applicant satisfies the court that he had sufficient cause for not preferring the appeal or making the application within such period. In the instant case, it is the plea of applicant that he has no knowledge about the passing of impugned judgment and decree till 21.11.2016 when he visited patwar khana for obtaining the revenue papers and at that time, it was disclosed to him by the Patwari that the land of his share has been incorporated in the name of his daughters also and thereafter, he contacted his counsel and applied for copy of impugned judgment and decree and after obtaining the copy of impugned judgment and decree, he has filed the appeal. It is

also his plea that he has not been intimated by his counsel about the passing of impugned judgment and decree and as such, delay in filing the appeal is beyond his control. Such plea of the applicant has been denied by the respondents. On the other hand, it is the plea of the respondents that the impugned judgment and decree was passed on the basis of compromise effected between the parties on 11.8.2016 and the statements of the parties were also recorded by the learned trial court on 11.8.2016 and the applicant was very much present at the time of passing of impugned judgment and decree and as such, there are no sufficient grounds for condoning the delay in filing the appeal in the instant case.

9. In order to prove his plea, applicant Prem Dutt has stepped into the witness box as AW1 and stated that he came to know about the impugned judgment and decree on 21.11.2016 when he visited patwar khana for obtaining the revenue papers from the Patwari and it was disclosed to him by the Patwari that the land of his share has been incorporated in the name of his daughters also and thereafter, he contacted his counsel and filed an application for obtaining copy of judgment and decree along with other documents and after obtaining copy of impugned judgment and decree, he has filed the appeal. He has further stated that the delay in filing the appeal is not intentional and the same is due to the facts and circumstances beyond the control of the applicant. In his cross examination, he has feigned ignorance that the respondents have filed a civil suit against him that the suit property is ancestral property in his hand and the respondents were also having share/interest in the suit property. However, he has admitted that suit remained pending between the parties for about four years. He has further admitted that it is at his instance that the suit was fixed for

conciliation. He goes on to admit that his statement copy of which is Ext. R1 was also recorded by learned Civil Judge(Senior Division) on 10.8.2016 and the same bears his signatures. Similarly, he has admitted that the statements, Ext. R2 to Ext. R4 are that of the respondents which were recorded in his presence. He has denied that his statement was again recorded on 11.8.2016 by the Court but admitted his signatures on Ext. R5. He has feigned ignorance that on 11.8.2016, the impugned judgment and decree was passed by the learned Court below in his presence. He has further admitted that the respondents have also received compensation qua their shares in respect of the land which has been acquired along with him, but denied that he was having knowledge about the impugned judgment and decree on the date of passing of the same.

10. On the other hand, respondent, Manju Kumari has stepped into the witness box as RW1 and stated that the case was sent for mediation as per wishes of the parties by the learned Court below and Shri Mohd. Iqbal, Advocate was appointed as Mediator and after mediation the case was decided by the learned trial Court on 11.8.2016 in the presence of applicant and his counsel. She has further stated that prior to 11.8.2016, the date of hearing was 10.8.2016, on which date the statements of parties were recorded and as some of the parties were not present on that date and as such, the case was adjourned to 11.8.2016. She has further stated that the applicant was very much in the knowledge of impugned judgment and decree which was passed on the basis of compromise effected between the parties. She was cross examined on behalf of the applicant, but nothing contrary could be elicited in her cross examination. As already observed, the applicant has admitted his signatures upon the statement, Ext. R1, which was

recorded by learned Court below on 10.8.2016. Though he has denied that on 11.8.2016, again his statement was recorded but he has admitted his signatures upon the statement, copy of which is Ext. R5, on perusal of which it is evident that the said statement of the applicant was recorded on 11.8.2016 in which the applicant has stated that he has heard the statement of the respondents and admitted the same to be correct and prayed that judgment be passed in the case on the basis of the statements of parties so recorded by learned Court below and thereafter, the impugned judgment and decree was passed by learned Court below on the basis of statements/compromise effected between the parties on 11.8.2016 in the presence of the applicant, who was defendant in the civil suit and his counsel thereby contradicting/belying the plea of the applicant that he has no knowledge about the passing of impugned judgment and decree till 21.11.2016 and corroborating/supporting the plea of respondents that the impugned judgment and decree was passed in the presence of applicant and his counsel by the learned Court below on the basis of compromise effected between the parties after recording statements of the parties including that of the applicant.

11. It is the plea of the applicant and is also in his evidence that on 21.11.2016 when he came to know about the impugned judgment and decree from patwari concerned, thereafter, he has applied for obtaining copy of impugned judgment and decree and after obtaining the copy of impugned judgment and decree, he has filed the present appeal without any delay. However, such plea and evidence adduced by the applicant stands contradicted/belied by the copy of impugned judgment and decree which has been attached with the appeal by the applicant. On perusal of copy of impugned judgment and decree, it is

clear that the application for copy of impugned judgment and decree was filed on 16.8.2016; whereas, the copy of impugned judgment and decree was delivered on 6.9.2016 thereby contradicting/belying the plea of the applicant that he has no knowledge about passing of the impugned judgment and decree till 21.11.2016 and it is thereafter, he has applied for obtaining copy of impugned judgment and decree. Accordingly, the copy of judgment and decree in the instant case has been obtained by the applicant or his counsel on 6.9.2016; whereas, the application for supplying the copy of impugned judgment and decree was filed on 16.8.2016, which fact goes to establish that the applicant was having knowledge about the impugned judgment and decree on the date of passing of the same which fact is also established on the basis of the order dated 11.8.2016 passed by the learned Court below, vide which the impugned judgment and decree has been passed by the learned Court below in the presence of the applicant and his counsel. Even if the period which was taken in obtaining the copy of impugned judgment and decree in the instant case by the applicant or his counsel w.e.f. 16.8.2016 to 6.9.2016 is deducted even then the appeal filed by the applicant is beyond the period of limitation as the applicant has filed the present appeal on 9.12.2016 after a period of three months from the date of obtaining the copy of impugned judgment and decree. In such circumstances also, the plea of the applicant that he has no knowledge about the impugned judgment and decree till 21.11.2016 cannot be accepted, but on the other hand on the basis of material on record as discussed above, it is established that the applicant was having knowledge about the passing of the impugned judgment and decree from the very beginning as the impugned judgment and decree was passed by the learned Court below in the presence of the applicant and

his counsel .

12. Thus in view of what has been stated above, the only conclusion which can be drawn is that the explanation offered by the applicant for delay of about three months in filing the present appeal is not plausible and since the applicant was having knowledge about the passing of impugned judgment and decree from the very beginning and the plea of applicant that he had no knowledge about the impugned judgment and decree till 21.11.2016 having not been established on record, it cannot be held that the applicant was prevented by the facts and circumstances beyond his control to file the appeal within a period of limitation. In view of this, it also cannot be held that there are sufficient grounds for condoning the delay in filing the present appeal and as such, the delay in filing the appeal in the instant case cannot be condoned as prayed by the applicant. Hence, it is held that the applicant has failed to prove this issue, which is answered in the negative.

RELIEF

13. As a sequel to my findings on issue No. 1 above, I find no merit in this application which deserves dismissal and is accordingly dismissed. Consequently, the appeal filed by the applicant being barred by limitation is also dismissed. Be consigned to record room after doing the needful.

Announced
22.11.2018.

sd/-
(S.C.Kainthla)
District Judge,
Sirmaur District at Nahan, H.P.