

HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR

D.B. Civil First Appeal No. 520/2022

M/s Shriram Transport Finance Company Limited, Through Director, Registered Address 303-306, Sabri Samriddhi Building, V.n. Purab Marg, Chamber S.t. Stand Ke Baad, Shyan Tambe Road, Chembur (East), Mumbai-400071. Branch Office Regional Manager, Regional Manager, B-19/20, Second Floor, Rama Enclave, District Shopping Center, Lal Kothi, Tonk Road, Jaipur-302015.

----Appellant

Versus

M/s Oriental Earthmovers Pvt. Ltd., Through Its Director Pradeep Singh Beniwal, Registered Office At 40-41, Mahalaxmi Nagar, Gajsinghpura, Opposite Heerapura Powerhouse, Ajmer Road, District Jaipur (Raj.)

----Respondent

For Appellant(s)	:	Mr.Yogesh Pujari, Adv.
For Respondent(s)	:	Mr.Prashant Choudhary, Adv.

HON'BLE MR. JUSTICE ASHOK KUMAR GAUR
HON'BLE MR. JUSTICE ASHUTOSH KUMAR

Order

14/09/2023

Learned counsel Mr.Prashant Choudhary appears on behalf of the sole respondent.

Service is treated as complete.

The present appeal is barred by limitation of 37 days and to the same effect an application under Section 5 of the Limitation Act has been filed by counsel for the appellant-defendant.

Learned counsel for the appellant submitted that the delay, which has occurred in filing appeal, is not on account of lapse on the part of the appellant, on the contrary, judgment passed by the

Court below was reserved by the Court and later on judgment was pronounced on 20.04.2022.

Learned counsel for the appellant submitted that immediately after pronouncement of the judgment, he applied for certified copy of the judgment on 22.04.2022 and the same was received on 26.04.2022/13.05.2022, as such the appellant received copy of the judgment dated 13.05.2023.

Learned counsel for the appellant submitted that the delay caused in filing the appeal is due to bona-fide mistake and after seeking legal opinion, the appellant has preferred this appeal.

Learned counsel further submitted that the appellant in an organization where proper approval is also sought from the Higher Authorities for filing appeal and as such the appeal may not be treated as time barred.

Learned counsel submitted that delay in filing the appeal may be condoned.

Per contra, learned counsel for the respondents submitted that the judgment dated 20.04.2022 was passed by the Court below and the same shows presence of learned counsel for the appellant.

Learned counsel submitted that the explanation given in the application does not inspire any confidence and as such this Court may not condone the delay and the appeal may be dismissed as barred by limitation.

We have heard the submissions made by learned counsel for the parties and gone through the contents of the application.

We find that proper explanation has been given by the appellant for not preferring the appeal within a prescribed time and sufficient cause has also been explained, as such this Court deems it proper to allow the misc. application and the appeal is treated within time.

Heard on admission.

Matter requires consideration.

Learned counsel for the appellant submitted that the impugned judgment and decree has been passed by the Court below without considering the pleadings and evidence led by the appellant.

Learned counsel further submitted that the impugned order suffers from perversity on reasoning and the same gives rise to the substantial question of law in the first appeal.

Per contra, learned counsel for the respondent submitted that the order passed by the Court below does not require any interference, as the entire evidence has been considered by the Court below by passing money decree in favour of the respondent-plaintiff.

We, as an interim measure, direct that effect and operation of the judgment and decree dated 20.04.2022 shall remain stayed on the condition of depositing the entire decretal amount by the appellant within a period of five weeks in Commercial Court No.2, Jaipur Metropolitan-II.

The respondent-claimant would be entitled for disbursement of 50% of the said amount after furnishing an undertaking before the Commercial Court that the money so received by him will be refunded with interest @ 6% per annum in case of present appeal

will be decided against him. The rest 50% of the amount may be kept in FDR for a term of one year to be renewed from time to time.

The misc. application stands disposed of, accordingly.

List the matter on 30.10.2023.

In the meanwhile, record may also be called.

(ASHUTOSH KUMAR), J

(ASHOK KUMAR GAUR), J

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