

HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR

S.B. Civil First Appeal No. 604/2022

Jaan Mohammad Son Of Shri Hamida

----Appellant

Versus

Prashant Karnawat Son Of Shri Santosh Chand Karnawat,

----Respondent

For Appellant(s)	:	Mr. Rahul Tiwari
For Respondent(s)	:	Mr. Nathu Singh Chauhan Mr. Zakir Hussain

HON'BLE MR. JUSTICE ASHOK KUMAR JAIN

Order

28/03/2024

1. Instant first appeal is preferred under Section 96 CPC aggrieved from judgment and decree dated 12.03.2020 in Civil Suit No. 34/27/2019 passed by learned Additional Judge No. 2, Tijara, District Alwar, Rajasthan. The plaintiff-respondent No. 1 has filed a suit for declaration, mandatory and permanent injunction and same was decreed in favour of respondent No.1- plaintiff, resulting in, a time of 60 days was granted to the plaintiff to fulfill conditions as stipulated in Patta No. 44/2007 and the respondents were restrained not to allot aforesaid Pata to any other person.
2. The appellant-applicant, who is an aggrieved person from illegal mining near his village filed representations before the Chief Minister, District Collector and Sub Divisional Officer, inter alia alleging that mining activity and installation of crusher near the village and other facilities of villagers would cause irreparable loss to them.

3. A perusal of aforesaid judgment and decree dated 12.03.2020 indicated that initially a lease was sanctioned, later same was cancelled but on a revision petition, a particular condition was imposed but the plaintiff aggrieved from revocation of mining lease invoked the jurisdiction of Civil Court.

4. Having considered the entirety of the matter and also the fact that the mining activities may cause damage not only to environment but to all persons, residing in nearby areas. The applicant had already expressed apprehension by way of representation and further his grievances were not redressed, so he is before this Court, I am of the considered view that in case, any mining operation is conducted near any village or any temple, school or any other place of utility, used by the public at large, then mining operations may cause irreparable loss to such individuals. Herein, the plaintiff has admitted that department on non-compliance of conditions, revoked the lease deed, therefore, the applicant is a necessary party, who has a right to challenge the judgment of Civil Court in favour of plaintiff, which was not challenged till date by the Mining Department and the State Government may be due to some unknown reasons, therefore, the application for permission to file first appeal is liable to be allowed.

5. The appellant-applicant is permitted to file the instant appeal and same be registered under Section 96 of CPC as regular appeal and the appellant is permitted to challenge the judgment and decree dated 12.03.2020.

6. Heard on application under Section 5 of Limitation Act for condonation of delay.

7. Having considered aforesaid, the reasons as narrated in application under Section 5 of Limitation Act, particularly in light of judgment in case of **Collector, Land Acquisition, Anantnag v. Mst. Katiji : (1987) 2 SCC 107**, wherein Hon'ble Supreme Court has laid down following principles for allowing the application under Section 5 of Limitation Act:-

1. Ordinarily a litigant does not stand to benefit by lodging an appeal late.
2. Refusing to condone delay can result in a meritorious matter being thrown out at the very threshold and cause of justice being defeated. As against this when delay is condoned the highest that can happen is that a cause would be decided on merits after hearing the parties.
3. "Every days delay must be explained" does not mean that a pedantic approach should be made. Why not every hours delay. every seconds delay ? The doctrine must be applied in a rational common sense pragmatic manner
4. When substantial justice and technical considerations are pitted against each other, cause of substantial justice deserves to be preferred for the other side cannot claim to have vested right in injustice being done because of a non-deliberate delay
5. There is no presumption that delay is occasioned deliberately, or on account of culpable negligence, or on account of mala fides. A litigant does not stand to benefit by resorting to delay. In fact he runs a serious risk
6. It must be grasped that judiciary is respected not on account of its power to legalize injustice on technical grounds but because it is capable of removing injustice and is expected to do so.

8. Having considered aforesaid, the applicant-petitioner, who was not a party before the Trial Court and after acquiring a knowledge about the judgment and decree, which may adversely impact the right of the villagers and also the individual right of the appellant-applicant, therefore, the reasons of delay in filing appeal were beyond the control of the appellant, hence, application under



Section 5 of Limitation Act, is allowed and the delay in filing the instant appeal is condoned.

9. The application stands disposed of.

10. A copy of this order be sent to the Chief Secretary, Rajasthan for his information and necessary action.

11. List the matter on 29.04.2024.

(ASHOK KUMAR JAIN),J