

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 5448 OF 2013

[Arising out of S.L.P. (C) No. 15288 of 2012]

| NARMADABAI J.THACKER (D) TH:LRS. & ORS. |...| APPELLANT(S) |

| Versus |

| GHANSHYAMDAS J.PILANI (D) TH:LRS & ORS. |...| RESPONDENT(S) |

O R D E R

Leave granted.

2. We have heard Mr. Vinay Navare, learned counsel for the appellants and Mr. Chinmoy Khaladkar, learned counsel for the respondent Nos. 1 and 2.

3. It is an admitted position that summons in the suit were served on the original defendants and pursuant thereto written statement was filed by them on 22.7.1983. The suit continued thereafter and on 19.4.1991, issues were framed by the trial court. The defendants (respondents) did not appear before the trial court on and from 19.4.1991. The trial court passed the ex-parte decree on 10.1.1992. It was only after 2937 days i.e. on 18.4.2000 that the defendants made an application under Order IX Rule 13 read with Section 151 of Code of Civil Procedure, 1908 (C.P.C.) before the trial court for setting-aside the ex-parte decree. As the said application was barred by time, an application under Section 5 of the Limitation Act, 1963 for condonation of delay was also made. The explanation set-out in the application for condonation of delay was that the defendants came to know of the ex-parte decree for the first time on 7.4.2000; immediately thereafter on 10.4.2000, an application was made for obtaining certified copy of the ex-parte judgment and decree and on receipt thereof on 18.4.2000, the application under Order IX Rule 13 read with Section 151 of C.P.C. has been made.

4. The trial court was persuaded by the cause shown by the defendants and vide order 13.4.2011, it condoned the long delay of 2937 days in filing the application for setting-aside the ex-parte decree. The trial court, accordingly, set-aside the ex-parte decree.

5. The legal heirs of original plaintiff (appellants herein) challenged the orders of the trial court in a Civil Revision before the High Court.

6. After hearing the parties, the High Court dismissed the Civil Revision. It is against this order that the present appeal by special leave has arisen.

7. We have carefully gone through the application for condonation of delay. We find that except the bald statement made in paragraph 10 of the application that "they came to know of the ex-parte decree for the first time on 7.4.2000", there is nothing on record to support the statement. Rather in the application, it has been stated that after filing the written statement on 22.7.1983, the matter has been adjourned from time to time for framing issues by the trial court and they (defendants) had been diligently pursuing the matter by remaining present in the Court. If that were so, there is no reason why they did not appear on 19.4.1991 (when the issues were framed) and thereafter. It is not a case where immediately after framing issues, the ex-parte decree came to be passed. The trial court took more than 9 months in passing the ex-parte decree after issues were framed. There is total lack of diligence on the part of the defendants in contesting the matter. It may have been a deliberate attempt on the part of the defendants in not appearing in the matter when the stage of framing issues arose and thereafter.

8. It is true that the court considers an application for condonation of delay liberally and with pragmatic view but nevertheless, where there is a long delay in approaching the court, the cause has to be sufficient and not make-believe.

9. In the present case, the long delay of 2937 days is not at all explained. The cause shown by the defendants in explaining the delay hardly inspires the confidence of the Court. It is not at all reliable. The High Court ought to have corrected a grossly unjust order of the trial court but it failed to do so necessitating our interference.

10. Appeal is allowed. The impugned order of the High Court and the order of the Trial Court dated 13.4.2011 are set-aside. No costs.

.....J.
(R.M. LODHA)

.....J.
(SUDHANSU JYOTI MUKHOPADHAYA)

NEW DELHI
JULY 12, 2013.

