

Managing Committee of Brothers St. Gabriel .. Appellant (s)

-vs-

Y.G.Krishna Murthy . Respondent (s)

O R D E R

The appellant herein brought a suit (O.S. No. 5324/89) for permanent injunction restraining the defendant-respondent from making any construction on northern side of its premises. On 28.1.94, the suit was dismissed in default. The respondent herein also filed a suit (O.S. No. 5494/89) against the Municipal Corporation, restraining the Corporation from demolishing the construction raised by him. The appellant herein, on his application, was impleaded as one of the defendants in the suit. However, on 12.10.95, the suit was set ex-parte against the appellant. It is under such circumstances, the appellant filed two sets of interlocutory applications one in suit No. 5324/89 for recall of the order dated 28.1.94, dismissing the suit in default and second interlocutory application in suit No. 5494/89 for setting aside the order dated 12.10.95 setting the suit ex-parte against it. Since there was delay in moving both the applications, the appellant filed an application for condonation of delay. The trial court without going into the question whether the appellant has made out a sufficient cause for condoning the delay, directed for condonation of delay and allowed both the applications on payment of Rs. 1,000/- each. It is against the said judgment, the respondent preferred a revision petition before the High Court. The High Court found that the appellant having not explained the sufficient cause, the trial court was not justified in condoning the delay. It is on this ground the revision was allowed and the order of the trial court was set aside. It is against the said judgment the appellant is in appeal before us.

Learned counsel appearing for the appellant urged, while exercising a revisional jurisdiction under Section 115 of the Code of Civil Procedure, it was not open for the High Court to interfere with the order of the trial court condoning the delay in filing two sets of interlocutory applications. He further contends that in these matters neither any question pertaining to the jurisdiction of the court nor any breach in the procedure while arriving at the finding by the trial court was involved and, therefore, the High Court was not justified in setting aside the order of the trial court. We do not find any substance in the argument. A court can condone the delay under Section 5 of the Limitation Act only if it found that the appellant has made out a case for condoning the delay by explaining sufficient cause for the delay. In the present case, the appellant has failed to show the sufficient cause for condoning the delay and, therefore, the trial court was not justified in condoning the delay. We are, therefore, of the view that the High Court was correct in setting aside the order of the trial court.

In view of the aforesaid facts, these appeals fail and are dismissed, accordingly. There shall be no order as to costs.

& & & & & & J.
(V. N. Khare)

& & & & & & J.
(B. N. Agrawal)

12th September, 2001

3