

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

Petition(s) for Special Leave to Appeal (Civil) No.1230/2000

(From the judgement and order dated 18/08/1999 in SA 496/98
of The HIGH COURT OF M.P AT JABALPUR)

STATE OF M.P. & ANR.

Petitioner (s)

VERSUS

IDOL.SHRI RAM MANDIR OF VILL.SARDARPUR

Respondent (s)

(With prayer for interim relief)
(With Appln(s). for permission to submit additional documents and
exemption from filing O.T.)
(For Final Disposal)

Date : 08/12/2000 This Petition was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE A.P. MISRA
HON'BLE MR. JUSTICE DORAISWAMY RAJU

For Petitioner (s) Mr. Sakesh Kumar,Adv.
Mr. S.K. Agnihotri,Adv.

For Respondent (s) Mr. Syed Ali Ahmed,Adv.
Mr. Tanweer Ahmed,Adv.
Mr. Vikas Bansal,Adv.

Mr. G.G. Upadhyay,Adv.
Mr. R.D. Upadhyay,Adv.

UPON hearing counsel the Court made the following
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Leave granted. The appeal is allowed. The costs
of Rs.2,000/- is awarded on the appellant. The amount to
be deposited in the first appellate court which may be
withdrawn by the respondent.

.SP1 (Ganga Thakur) (V.P. Tyagi)
P.S.to Registrar Court Master

Signed order is placed on the file.

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IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 7186 OF 2000~@@
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...APPELLANT (S)

STATE OF M.P. & ANR.

VERSUS

...RESPONDENT (S)

IDOL SHRI RAM MANDIR OF
VILL. SARDARPUR

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Leave granted.

Heard learned counsel for the parties.

The trial court decreed the respondent's suit holding the temple to be private temple. The appeal was dismissed by the appellate court being barred by time. The High court also dismissed the second appeal summarily without entering into any question.

Having heard learned counsel for the parties, we find the delay for which appeal was dismissed was only 25 days. Learned counsel for the respondent attempted to show that the explanation was not justified and hence the dismissal by the appellate court could not be said to be illegal. However, looking to the issue in this case and the period of delay, even on the facts and circumstances of this case, we feel that the appellate court should not

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have dismissed the appeal on the ground of it being barred by time. Another submission raised by the learned counsel for the respondent is, as rejection of application by the appellate court, not condoning the delay is not a decree, hence no second appeal arises. It is not necessary to enter into this question on the fact of this case. However, we may record when the application is rejected not condoning the delay consequently even unnumbered appeal was also dismissed.

Accordingly, the present appeal is allowed. The impugned judgments of both, the High Court and first appellate court are set aside. The case is remanded back to the Additional District Judge, Sardarpur to decide the appeal afresh treating it as not barred by time after giving opporltunities to the parties.

However, we award costs of Rs.2,000/- on the appelliant. The amount to be deposited in the first appellate court which may be withdrawn by the respondent.

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.....J.
(A.P. Misra)

New Delhi,

.....J.
(Doraiswamy Raju)

December 8, 2000.