

CASE NO.:
Appeal (civil) 953 of 2004

PETITIONER:
BHOLI (DEAD) BY L.RS.

RESPONDENT:
LACHHMAN SINGH & ORS.

DATE OF JUDGMENT: 22/04/2008

BENCH:
H.K. SEMA & MARKANDEY KATJU

JUDGMENT:
JUDGMENT
O R D E R
CIVIL APPEAL NO.953 OF 2004

This appeal filed by the plaintiff is directed against the order dated 05.03.2008 passed by the High Court condoning the delay of 17 years in filing second appeal. By the impugned order the High Court admitted the second appeal after condoning the delay of 17 years.

We have heard the learned counsel for the parties.

The facts leading to the filing of the present appeal may be summarily recited. The plaintiff's suit was for declaration that he is owner of the land in question and the defendant has fraudulently got a sale deed executed in his favour. Therefore, the plaintiff prayed for cancellation of the sale deed. The trial court dismissed the suit. On appeal being preferred by the plaintiff the same was disposed of in terms of compromise arrived at between the plaintiff and the defendants. The terms of the compromise runs as under :

"It is ordered that in view of the statements of the parties, the appeal of the appellant is accepted and the suit is decreed but if the Respondents/Defendants Nos.8 to 18 pay a sum of Rs.10,000/- in two installments, one of Rs.7,000/- on or before 30.10.1985 and second instalment of Rs.3,000/- on or before 30.5.1986, the appeal shall be deemed to be dismissed in either event, the parties are left to bear their own costs."

It appears that the defendants failed to deposit the second instalment of Rs.3,000/- on or before 30.05.1986. An application was filed under Section 147 CPC for extension of time to deposit the second instalment which was rejected by the trial court. Aggrieved thereby, the defendants filed an application under Section 115 CPC which was allowed by the High Court by extending the time enabling the defendants to deposit the second instalment. Against the order of the High Court the plaintiff filed C.A.No.3422 of 1996 before this Court which was disposed of on 30th October, 2002. The relevant portion of the order reads as under :

"It is not disputed that the settlement arrived at between the parties was made part of the decree of the Court. It was a decree like any other decree passed by the Civil Court. Once a decree is passed by the Court, it becomes functus officio to modify the decree. It is only the higher court either to set aside the decree or to modify the decree. Since the court, after passing the decrees became functus officio, it also had no power under Section 148 CPC to extend the time for depositing the money by modifying the terms of the decree which was passed on settlement between the parties. If the Court modifies the decree, it varies the terms of the settlement which is not permissible. In that view of the matter, the High Court fell in error in extending the time for depositing the second instalment by the defendants. Consequently, the appeal deserves to be allowed."

In terms of the order referred to above this Court clearly held that the terms of the compromise had become a decree passed by the civil court and, therefore, the Court has become functus officio to modify the decree. This Court was, therefore of the view that the High Court fell in error to extend the time for depositing the money

by modifying the terms of the decree which was based on settlement between the parties. This Court was further of the view that if the Court modifies the decree, it varies the terms of the settlement which is not permissible. On the aforesaid premises this Court set aside the order of the High Court extending the time for depositing the second instalment.

In view of the aforesaid decision of this Court in clear terms it was not open for the High Court to entertain the second appeal after condoning the delay of 17 years. After the decision of this Court dated 30.10.2002 the controversy between the parties finally came to an end and it was not permissible for the High Court to entertain the second appeal thereafter.

In the aforesaid view, we are of the view that the High Court fell in error in entertaining the second appeal by the impugned order. Accordingly, the impugned order passed by the High Court is set aside. The appeal is allowed. No costs.

