

C.A.No. 612 OF 2000
IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION
CIVIL APPEAL NO.612 OF 1998

SURESH PRASAD

.....APPELLANT (S)

VERSUS

SHEIKH AMEEN & ANR.

.....RESPONDENT (S)

O R D E R

This appeal has been filed by the defendant-appellant (hereinafter referred to as the 'appellant').

A suit was filed by the plaintiff-respondent (hereinafter referred to as 'respondent') for declaration that the sale deed dated 16.3.1981, executed by his brother in favour of the appellant in respect of House No.337 situated at Barela, District Jabalpur, was not binding on him. The suit was decreed by the trial court on 2.3.1993. Aggrieved by the aforesaid order of the trial court, the appellant filed an appeal on 14.6.1993 along with an application under Section 5 of the Indian Limitation Act to condone the delay of 38 days in filing the same. The first appellate court declined to condone the delay and dismissed the interim application for condonation of delay and as a consequence thereof, the appeal was dismissed being barred by time.

The second appeal was dismissed by the High Court in limine by the impugned order.

After going through the application under Section 5 of the Limitation Act, filed by the appellant before the first appellate court, we find that a case for condonation of delay was made out and the first appellate court erred in dismissing the appeal being barred by time. The High Court also erred in not condoning the delay and dismissing the appeal.

The appeal is accepted. The delay of 38 days in filing the first appeal is condoned. The judgment of the High Court and that of the first appellate court are set aside. The case is remitted back to the first appellate court for fresh decision on merits. Since this case has been delayed considerably, a direction is issued to the first appellate court to dispose of the appeal within three months on receipt of a copy of this Order as well as the record.

We are informed that the record has been received in this Court. The Registry is directed to remit the record directly to the first appellate court immediately under intimation to the High Court so that the first appellate court can dispose of the appeal within a period of three months as directed in the previous paragraph.

.....J

(ASHOK BHAN)

.....J.

(S.H. KAPADIA)

NEW DELHI;
JULY 22, 2004.

ITEM NO.103

COURT NO.10

SECTION IV

S U P R E M E C O U R T O F I N D I A
Record of Proceedings

Civil Appeal No.612/2000

SURESH PRASAD

Appellant (s)

VERSUS

SHEIKH AMEEN & ANR.
Respondent (s)
(With office report)

Respo

Date : 22/07/2004 This Petition was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE ASHOK BHAN

HON'BLE MR. JUSTICE S.H. KAPADIA

For Appellant (s)

Mr. S.S. Kahanduja, Adv.
for Mr. Yash Pal Dhingra, Adv.

For Respondent (s)

Mr. Shiv Sagar Tiwari, Adv.
Mr. Manendra Pratap Singh, Adv.
Mr. Umesh Babu Chaurasia, Adv.

UPON being hearing, the Court made the following

O R D E R

The appeal is allowed in terms of the signed order.

(Satish K. Yadav)
(Kanwal Singh)
Court Master

Court Master

(Signed order is placed on the file)