# Ajay Dabra vs Pyare Ram on 31 January, 2023

## Author: Sudhanshu Dhulia

## Bench: Sudhanshu Dhulia, Pamidighantam Sri Narasimha



REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION
CIVIL APPEAL NO……OF 2023
ARISING OUT OF SLP (C) No.15793 OF 2019

AJAY DABRA Appellant(s)

Versus

PYARE RAM & ORS. …Respondent(s)

WITH
CIVIL APPEAL NO……OF 2023
ARISING OUT OF SLP (C) No.15848 OF 2019

AJAY DABRA Appellant(s)

Versus

SUNDER SINGH & ANR. …Respondent(s)

JUDGMENT

SUDHANSHU DHULIA, J.

Leave granted.

2. Both these Appeals before this Court are by the plaintiff who had filed a suit for specific performance, which was dismissed and later his First Appeal before the High Court was dismissed on the grounds of delay. We may state here that the Plaintiff/Appellant was not a party to the contract of which a specific performance was sought. The contract was executed between the defendant and a company called M/s Himalayan Ski Village Pvt. Ltd. which was for sale of an 'agricultural land' in Himachal Pradesh. There were two plots of land for which two different "agreements of sale" were executed, and hence two civil suits were filed.

3. In both the above appeals, there is a common challenge against order dated 17.12.2018 passed by the Single Judge of the High Court of Himachal Pradesh in CMP (M) No.75 of 2018 & CMP (M) No.76 of 2018. The impugned order dismisses the delay condonation applications filed under Section 5 of the Limitation Act, 1963, declining to condone a delay of 254 days, because the reasons assigned for the condonation were not sufficient reasons for condonation of the delay. The Appellant herein had earlier filed two suits (bearing nos. 28/2012 & 29/2012), for specific performance which were dismissed by the District Judge, Kullu vide order dated 30.12.2016.

4. According to the Appellant the delay ought to have been condoned and his appeal should have been heard on its merits.

5. What we have here is a pure civil matter. An appeal has to be filed within the stipulated period, prescribed under the law. Belated appeals can only be condoned, when sufficient reason is shown before the court for the delay. The appellant who seeks condonation of delay therefore must explain the delay of each day. It is true that the courts should not be pedantic in their approach while condoning the delay, and explanation of each day's delay should not be taken literally, but the fact remains that there must be a reasonable explanation for the delay. In the present case, this delay has not been explained to the satisfaction of the court. The only reason assigned by the appellant for the delay of 254 days in filing the First Appeal was that he was not having sufficient funds to pay the court fee! This was not found to be a sufficient reason for the condonation of delay as the appellant was an affluent businessman and a hotelier. In any case, even it is presumed for the sake of argument that the appellant was short of funds, at the relevant point of time and was not able to pay court fee, nothing barred him from filing the appeal as there is provision under the law for filing a defective appeal, i.e., an appeal which is deficient as far as court fee is concerned, provided the court fee is paid within the time given by the Court. We would refer to Section 149 of Civil Procedure Code, 1908 which reads as under :-

> "Section 149: Power to make up deficiency of Court Fees.- Where the whole or any part of any fee prescribed for any document by the law for the time being in force relating to court fees has not been paid, the Court may, in its discretion, at any stage, allow the person, by whom such fee is payable, to pay the whole or part, as the case may be, of such court-fee; and upon such payment the document, in respect of which such fee is payable, shall have the same force and effect as if such fee had been paid in the first instance." It also needs to be emphasized that this Court as well as various High Courts, have held that Section 149 CPC acts as an exception, or even a proviso to Section 4 of Court Fees Act 18701.
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> In terms of Section 4, an appeal cannot be filed before a High Court without court fee, if the same is prescribed. But this provision has to be read along with Section 149 of CPC which we have referred above. A short background to the incorporation of Section 149 in CPC would explain this aspect.
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> Section 4.- Fees on documents filed, etc., in High Courts in their Extraordinary Jurisdiction.—No document of any of the kinds specified in the First or Second

> Schedule to this Act annexed, as chargeable with fees, shall be filed, exhibited or recorded in, or shall be received or furnished by, any of the said High Courts in any case coming before such Court in the exercise of its extraordinary original civil jurisdiction; or in the exercise of its extraordinary original criminal jurisdiction; In their appellate jurisdiction.—or in the exercise of its jurisdiction as regards appeals from the 1[judgments (other than judgments passed in the exercise of the ordinary original civil jurisdiction of the Court) or one] or more Judges of the said Court, or of a Division Court;—or in the exercise of its jurisdiction as regards appeals from the 2[judgments (other than judgments passed in the exercise of the ordinary original civil jurisdiction of the Court) or one] or more Judges of the said Court, or of a Division Court;" or in the exercise of its jurisdiction as regards appeals from the Courts subject to its superintendence; as Courts of reference and revision.—or in the exercise of its jurisdiction as a Court of reference or revision; unless in respect of such document there be paid a fee of an amount not less than that indicated by either of the said Schedules as the proper fee for such document.

6. The provision as given under Section 4 of the Court Fees Act was felt to be extremely rigorous at times and for this reason in the old Code of Civil Procedure i.e. of 1882, an amendment was inserted in the year 1892 which was Section 522-A which reads as under:-

> “If a memorandum of appeal or application for a review of judgment has been presented within the proper period of limitation, but is written upon paper insufficiently stamped, and the insufficiency of the stamp was caused by a mistake on the part of the appellant or applicant as to the amount of the requisite stamps, the memorandum of appeal or application shall have the same effect, and be as valid as if it had been properly stamped:
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> Provided that such appeal or application shall be rejected unless the appellant or applicant supplies the requisite stamp within a reasonable time after the discovery of the mistake to be fixed by the court.”

7. The above provision was later enacted, albeit in a differently worded form in the Code of Civil Procedure of 1908, which is present Section 149. In Mannan Lal v. Mst. Chhotaka Bibi & Ors.2 this Court while dealing with Section 149 of CPC and Section 4 of the Court Fees Act, referred to the history of amendment, as we have stated above, and had this to say in its para 12 and 13 of the judgment:-

> (1970) 1 SCC 769 “12. The above section therefore mitigates the rigour of Section 4 of the Court Fees Act and it is for the court in its discretion to allow a person who has filed a memorandum of appeal with deficient court fee to make good the deficiency and the making good of such deficiency cures the defect in the memorandum not from the time when it is made but from the time when it was first presented in court.

13. In our view in considering the question as to the maintainability of an appeal when the court fee paid was insufficient to start with but the deficiency is made good later on, the provisions of the Court Fees Act and the Code of Civil Procedure have to be read together to form a harmonious whole and no effort should be made to give precedence to provisions in one over those of the other unless the express words of a statute clearly override those of the other."

8. In Mannan Lal (supra), this aspect was dealt in rather detail, where the Court referred to several decisions of different High Courts on interpretation of Section 149 CPC and Section 4 of Court Fees Act. It particularly referred to the decision of the Allahabad High Court which is S. Wajid Ali v. Mt. Isar Bano Urf Isar Fatima & Ors.3 wherein it was held that a court has to exercise its discretion for allowing a deficiency of court fees to be made good but once it was done, a document was to be deemed to have been presented and received on the date when it was originally filed, and not on the date when the defects were cured. AIR 1951 All 64 Therefore this Court in Mannan Lal (supra) further stated as under :-

> "21. The words used in that judgment are no doubt of wide import. But however that may be in the case before us there can be no difficulty in holding that an appeal was presented in terms of Order 41 Rule 1 of the Code inasmuch as all that this provision of law requires for an appeal to be preferred is the presentation in the form of a memorandum as therein prescribed. If the court fees paid thereon be insufficient it does not cease to be a memorandum of appeal although the court may reject it. If the deficiency in the fees is made good in terms of an order of the court, it must be held that though the curing of the defect takes place on the date of the making good of the deficiency, the defect must be treated as remedied from the date of its original institution.
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> 22. In view of the above reasons, we find ourselves unable to concur in the judgment of the High Court. In the main judgment under appeal, the reasoning appears to be that the memorandum of appeal had no effect before the making good of the deficiency and as the same took place after 12th November 1962 the appeal was not saved by Section 3(2) of the U.P. Act. The learned Chief Justice of the Allahabad High Court expressed the opinion that a memorandum of appeal barred by time stood on a footing different from the one in which there was deficiency in the court fee paid. According to him under Section 3 of the Limitation Act it is an appeal that is dismissed and not a memorandum of appeal. When therefore Section 4 of the Court Fees Act deals with a memorandum of appeal the consideration of the laws of limitation bears no analogy to a deficiency in court-fees. With due respect we are not impressed by the above reasoning. As already noted, although there is no definition of the word "appeal" in the Code of Civil Procedure, it can only be instituted by filing a memorandum of appeal.

The filing of a memorandum of appeal therefore brings an appeal into existence; if the memorandum is deficient in court-fee, it may be rejected and if rejected, the appeal comes to an end. But if it is not rejected and time is given to the appellant to make up the deficiency and this

opportunity is availed of, Section 149 of the Code expressly provides that the document is to have validity with retrospective effect as if the deficiency had been made good in the first instance. By reason of the deeming provision in Section 149 the memorandum of appeal is to have full force and effect and the appeal has to be treated as one pending from the date when it was before the Stamp Reporter and the deficiency noted therein." This position has been reiterated by this Court in several of its later decisions such as P.K. Palanisamy v. N. Arumugham & Anr.4, Ganapathy Hegde v. Krishnakudva & Anr.5 and K.C. Skaria v. Govt. of State of Kerala & Anr.6

9. We do not have a case at hand where the appellant is not capable of purchasing the court fee. He did pay the court fee ultimately, though belatedly. But then, under the facts and circumstances of the case, the reasons assigned for the delay in filing the appeal cannot be a valid reason for condonation of the (2009) 9 SCC 173 (2005) 13 SCC 539 (2006) 2 SCC 285 delay, since the appellant could have filed the appeal deficient in court fee under the provisions of law, referred above. Therefore, we find that the High Court was right in dismissing Section 5 application of the appellant as insufficient funds could not have been a sufficient ground for condonation of delay, under the facts and circumstance of the case. It would have been entirely a different matter had the appellant filed an appeal in terms of Section 149 CPC and thereafter removed the defects by paying deficit court fees. This has evidently not been done.

10. This Court, while emphasizing the scope of Section 5 of the Limitation Act, in the case of Mahant Bikram Dass Chela versus Financial Commissioner, Revenue, Punjab, Chandigarh And Others7 has held:

> "21. Section 5 of the Limitation Act is a hard task-master and judicial interpretation has encased it within a narrow compass. A large measure of case-law has grown around Section 5, its highlights being that one ought not easily to take away a right which has accrued to a party by lapse of time and that therefore a litigant who is not vigilant about his rights must explain every day's delay. These and similar considerations which influence the decision of Section 5 applications are out of place in cases where the appeal itself is preferred within the period of limitation but there is an irregularity in (1977) 4 SCC 69 presenting it. Thus, in the instant case, there was no occasion to invoke the provisions of Section 5, Limitation Act, or of Rule 4, Chapter I of the High Court Rules. If the Division Bench were aware that Rule 3 of Chapter 2-C is directory, it would have treated the appeal as having been filed within the period of limitation, rendering it inapposite to consider whether the delay caused in filing the appeal could be condoned." This Court in the case of Basawaraj and Another versus Special Land Acquisition Officer8 while rejecting an application for condonation of delay for lack of sufficient cause has concluded in Paragraph 15 as follows:
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> "15. The law on the issue can be summarised to the effect that where a case has been presented in the court beyond limitation, the applicant has to explain the court as to what was the "sufficient cause" which means an adequate and enough reason which prevented him to approach the court within limitation. In case a party is found to be

negligent, or for want of bona fide on his part in the facts and circumstances of the case, or found to have not acted diligently or remained inactive, there cannot be a justified ground to condone the delay. No court could be justified in condoning such an inordinate delay by imposing any condition whatsoever. The application is to be decided only within the parameters laid down by this Court in regard to the (2013) 14 SCC 81 condonation of delay. In case there was no sufficient cause to prevent a litigant to approach the court on time condoning the delay without any justification, putting any condition whatsoever, amounts to passing an order in violation of the statutory provisions and it tantamounts to showing utter disregard to the legislature." Therefore, we are of the considered opinion that the High Court did not commit any mistake in dismissing the delay condonation application of the present appellant.

11. This apart, even on merits, we do not find it a case which calls for our interference. The facts of the case are that one, M/s. Himalayan Ski Village Pvt. Ltd. had entered into an 'Agreement for Sale' with an agriculturist/landowner of Himachal Pradesh, for sale of his agricultural land. Now the admitted position in the State of Himachal Pradesh is that under Section 118 of the Himachal Pradesh Tenancy and Land Reforms Act, 1972 (for short '1972 Act'), only an agriculturist, which is defined under Section 2(2) of the 1972 Act, can purchase land in Himachal Pradesh, which would mean a landowner who personally cultivates his land in Himachal Pradesh. If a non-agriculturist has to purchase a land, it can only be done with the prior permission of the State Government under Section 118 of the Act. M/s. Himalayan Ski Village was a private company, which was admittedly not an 'agriculturist' and therefore was not capable under the law to purchase the land in Himachal Pradesh and therefore it was a condition of the agreement to sale that the defendant would secure the necessary approval from the government within a stipulated period of time. The admitted position is that this approval was not given to the defendant by the State Government and then the defendant assigned his right to the plaintiff who thereafter filed the suit for specific performance.

Section 118 of the Himachal Pradesh Tenancy and Land Reforms Act, 1972 reads as under:

"1[118. Transfer of Land to non-

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agriculturist      barred:      -      (1)
Notwithstanding      anything     to  the
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contrary contained in any law, contract, agreement, custom or usage for the time being inforce but save as otherwise provided in this Chapter, no transfer of land (including transfer by a decree of a civil court or for recovery of arrears of land revenue) by way of sale deed, gift, will, exchange, lease, mortgage with possession, creation of a tenancy or in any other manner shall be valid in favour of a person, who is not an agriculturist.] 2[Explanation. For the purpose of this sub-section the expression "Transfer of land" shall not include.

i. Transfer by way of inheritance; ii. Transfer by way of gift made or will executed, in favour of any or all legal heirs of the donor or the testator, as the case may be;

iii. Transfer by way of lease of land or building in a municipal area;

but shall include

a) a benami transaction in which land is transferred to an agriculturist for a consideration paid or provided by a non- agriculturist; and

b) an authorization made by the owner by way of special or general power of attorney or by an agreement with the intention to put a non-agriculturist in possession of the land and allow him to deal with the land in the like manner as if he is a real owner of that land.] (2) Nothing in sub-section (1) shall be deemed to prohibit the transfer of land by any person in favour or,

(a)....

(b)....

(c)....

(d)....

(e)....

(f)....

(g)....

(h) a non agriculturist with the permission of the State Government for the purposes that may be prescribed."

12. The admitted position is that M/s Himalayan Ski Village Pvt. Ltd. failed to get the permission from the State Government under Section 118 of the 1972 Act.

13. What was done instead was, that when the purchaser failed to get the requisite permission from the State Government under Section 118 of the 1972 Act, it assigned its rights to the Plaintiff (i.e., the present Appellant before this Court), and the Plaintiff in turn filed a suit for Specific Performance against the defendants i.e., Surender Singh-Defendant No. 1 who is Respondent No. 1 herein. It was only later that he also impleaded M/s Himalayan Ski Village Pvt. Ltd.- Defendant No. 2 who is Respondent No. 2 herein.

14. The Trial Court dismissed the suits of the plaintiff primarily on grounds that getting permission from the State Government was an essential condition, which had not been fulfilled by him as per Section 118 of the 1972 Act and under the facts and circumstances of the case, the assignment in terms of the Plaintiff was not proper and valid.

15. All other conditions which have been stipulated in the Agreement to Sell depended on this primary condition i.e., permission from the State Government, under Section 118 of the 1972 Act. There is no specific clause in the "Agreement to Sell", which says that in case the purchaser fails to obtain required permission from the State Government, it could assign its rights to an agriculturist of Himachal Pradesh and the seller therefore would not have any objection in executing the Sale deed in favour of such an assignee.

16. In the present case the assignment is not valid as there was no prior consent or approval of the seller before the assignment. In the absence of such a condition and in lieu of the fact that before assignment of its rights to the plaintiff/Appellant herein no permission of the seller was obtained, there was no question of granting a decree of Specific Performance in favour of the plaintiff. Consequently, this is not a case which calls for our interference.

17. We may here add that the whole purpose of Section 118 of the 1972 Act is to protect agriculturists with small holdings. Land in Himachal Pradesh cannot be transferred to a non- agriculturist, and this is with a purpose. The purpose is to save the small agricultural holding of poor persons and also to check the rampant conversion of agricultural land for non-agricultural purposes. A person who is not an agriculturist can only purchase land in Himachal Pradesh with the permission of the State Government. The Government is expected to examine from a case to case basis whether such permission can be given or not. In the present case, it thought it best, not to grant such a permission. However, the purpose of the transfer remains the same, which is a non-agricultural activity. By merely assigning rights to an agriculturist, who will be using the land for a purpose other than agriculture, would defeat the purpose of this Act. In the case of Ashok Madan and Another versus State of H.P. and Other9 the Himachal Pradesh High Court had laid down the following important observation with respect to Section 118 of the 1972 Act:

> "12. The law is, therefore, clear that merely the nomenclature or the title of the document sill not determine what are the rights created by the document. The intention of the parties must be gathered on a combined reading of all the documents and the behaviour of the parties in the manner in which they treated the document. Section 118 was introduced with a view to restrict the transfer of land in favour of non- agriculturist except to specified persons as contained in the Section itself. The purpose behind it was that the economically advantageous class does not take undue advantage of the small agriculturists by purchasing their small holdings. The provision was introduced as rich persons who were not agriculturists were purchasing 2011 SCC OnLine HP 3885 agricultural land in Himachal Pradesh at high price exploiting the local Himachali people. However, the section itself provided that in special cases permission can be granted for transfer of land to non-agriculturist. The constitutional validity of this Section was upheld in Smt. Sudarshana Devi v. Union of India, ILR 1978 HP 355."
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> 19. Under the facts and circumstances of the case we do not find any scope for interference in the matter. Consequently, both the appeals stand dismissed.

..... J.

(Pamidighantam Sri Narasimha) ..... J.

(Sudhanshu Dhulia) New Delhi, January 31, 2023.