

RAHEEM SHAH & ANR.

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v.

GOVIND SINGH & ORS.

(Civil Appeal No. 4628 of 2023)

JULY 24, 2023

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**[A. S. BOPANNA AND BELA M. TRIVEDI, JJ.]**

*Delay – Condonation of – Suit filed by Respondent No.1 was decreed by the trial court – Appellants-defendants No.1 and 2 in the suit filed appeal, dismissed by the lower Appellate Court on the ground of limitation – Second Appeal filed by the appellants was also dismissed by the High Court – Held: Since the contention in the appeal before the lower Appellate Court was that the judgment was not in the knowledge of the appellants, that aspect of the matter was required to be kept in view by the lower Appellate Court as the appellants in fact had not taken effective part except filing written statement – When there was delay of only 52 days in filing the appeal and furthermore when the parties were litigating with regard to the right over immovable properties, the substantial rights were to be decided between the parties – The very manner in which the lower Appellate Court dismissed the appeal on the ground of delay when the delay was not inordinate is not justified – High Court also not justified in dismissing the appeal only on the ground that there was no question of law – Judgments passed by the High Court and the lower Appellate Court, set aside – Delay in filing the appeal before the lower Appellate Court condoned, appeal restored to its file – Code of Civil Procedure, 1908 – s.96 – Limitation Act, 1963 – s.5 – Practice and Procedure.*

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*Collector, Land Acquisition, Anantnag & Anr. v. Mst. Katiji & Ors. (1987) 2 SCC 107 : [1987] 2 SCR 387 – relied on.*

**Case Law Reference**

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**[1987] 2 SCR 387**

**relied on**

**Para 4**

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 4628 of 2023.

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A From the Judgment and Order dated 16.04.2015 of the High Court of Madhya Pradesh, Principal Seat at Jabalpur in SA No. 1185 of 2010.

Vikas Upadhyay, Nitin Gaur, Kaustubh Anshuraj, Kuber Boddh, Arjun Singh Tomar, Ms. Ankita Kashyap, Advs. for the Appellants.

B Abhishek Vikas, Anshuman Shrivastava, Abhijeet Shrivastava, Abhishek Sharma, Advs. for the Respondents.

### JUDGMENT

The following Judgment of the Court was delivered:

Leave granted.

C 1. Heard learned counsel for the parties and perused the appeal papers.

D 2. Respondent No.1 herein is the plaintiff in the original suit bearing Civil Suit No.3 A/02. The suit was decreed by the trial court through its judgment dated 01.10.2005. The appellants herein who were the defendants No. 1 and 2 in the suit filed a Regular First Appeal under Section 96 of the Civil Procedure Code assailing the said judgment. Since there was delay of 52 days in filing the appeal, an application under Section 5 of the Limitation Act was filed seeking condonation of delay. The lower Appellate Court through its judgment dated 08.10.2010 had dismissed the appeal bearing Civil Appeal No.35A/2005 on the ground of limitation holding that the delay has not been properly explained and had consequently dismissed the appeal. Against the said judgment, the appellants were before the High Court of Madhya Pradesh in a Second Appeal bearing No.1185/2010. The Second Appeal has been dismissed by the High Court through its judgment dated 16.04.2015 on the ground that there is no question of law for consideration.

G 3. It is in that light, the appellants are before this Court in this appeal. At the outset, having taken note that the contention in the appeal before the lower Appellate Court was that the judgment was not in the knowledge of the appellants herein, that aspect of the matter was required to be kept in view by the lower Appellate Court since the appellants in fact had not taken effective part except filing written statement. When there was delay of only 52 days in filing the appeal and furthermore when the parties were litigating with regard to the right over immovable properties, the substantial rights were to be decided between the parties.

H The delay could have been condoned and the appeal could have been decided on merits.

4. This Court in the case of Collector, Land Acquisition, Anantnag & Anr. Vs. Mst. Katiji & Ors. reported in (1987) 2 SCC 107 has held as hereunder:

“The legislature has conferred the power to condone delay by enacting Section 5 of the Indian Limitation Act of 1963 in order to enable the courts to do substantial justice to parties by disposing of matters on ‘merits’. The expression ‘sufficient cause’ employed by the legislature is adequately elastic to enable the courts to apply the law in a meaningful manner which subserves the ends of justice—that being the life-purpose for the existence of the institution of courts. It is common knowledge that this Court has been making a justifiably liberal approach in matters instituted in this Court. But the message does not appear to have percolated down to all the other courts in the hierarchy. And such a liberal approach is adopted on principle as it is realized that:

1. Ordinarily a litigant does not stand to benefit by lodging an appeal late.

2. Refusing to condone delay can result in a meritorious matter being thrown out at the very threshold and cause of justice being defeated. As against this when delay is condoned the highest that can happen is that a cause would be decided on merits after hearing the parties.

3. “Every day’s delay must be explained” does not mean that a pedantic approach should be made. Why not every hour’s delay, every second’s delay ? The doctrine must be applied in a rational common sense pragmatic manner.

4. When substantial justice and technical considerations are pitted against each other, cause of substantial justice deserves to be preferred for the other side cannot claim to have vested right in injustice being done because of a non-deliberate delay.

5. There is no presumption that delay is occasioned deliberately, or on account of culpable negligence, or on account of mala fides. A litigant does not stand to benefit by resorting to delay. In fact he runs a serious risk.

6. It must be grasped that judiciary is respected not on account of its power to legalize injustice on technical grounds but

A           because it is capable of removing injustice and is expected to do so.

          Making a justice-oriented approach from this perspective, there was sufficient cause for condoning the delay in the institution of the appeal.”

B           5. The above decision expressing the intention of justice oriented approach percolating down to all the courts was rendered nearly three decades ago but unfortunately the case on hand demonstrates the pervading insensitive approach, which apart from continuing the agony of the litigants concerned has also unnecessarily burdened the judicial hierarchy which after going through the entire process will have to set the clock back, at this distant point in time and prolong their agony. If only the court concerned had been sensitive to the justice oriented approach rather than the iron- cast technical approach, the litigation between the parties probably would have come to an end much earlier after decision on the merits of their rival contention.

D           6. If that be the position, the very manner in which the lower Appellate Court has dismissed the appeal on the ground of delay when the delay was not inordinate is not justified and the High Court was also not justified in dismissing the appeal only on the ground that there was no question of law.

E           7. Hence, the judgment dated 16.04.2015 passed by the High Court as also the judgment dated 08.10.2010 passed by the lower Appellate Court are set aside. The delay in filing the appeal before the lower Appellate Court is condoned. The Civil Appeal No. 35A/2005 is restored to the file of the lower Appellate Court i.e. First Additional District Judge, Nasrullaganj, District Sehor, M.P. The parties shall put forth their contentions on merits. All contentions are left open.

F           8. The parties shall appear before the lower Appellate Court without issuance of fresh notice/summons on 23.08.2023 at 11.00 A.M as the first date for appearance. The lower Appellate Court may thereafter regulate its proceedings and dispose of the matter as expeditiously as possible on its merits and in accordance law.

          8. The parties shall appear before the lower Appellate Court without issuance of fresh notice/summons on 23.08.2023 at 11.00 A.M as the first date for appearance. The lower Appellate Court may thereafter regulate its proceedings and dispose of the matter as expeditiously as possible on its merits and in accordance law.

          9. The appeal is, accordingly, disposed of.

          10. Pending application(s) shall also stand disposed of.