

**HIGH COURT OF JAMMU AND KASHMIR
AT JAMMU**

CIMA No.512/2009, CMA No.738/2009

Ravinder Singh Jamwal Vs. Bharat Sachar Nigam Ltd.

Coram:

Hon'ble Mr. Justice Bansi Lal Bhat-Judge

Appearing counsel:

For Appellant(s) : Mr.S.D.Sharma, Advocate.

For Respondent (s) : Mr.Ravinder K. Gupta, Advocate

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| 1. | Whether to be reported in Press/Journal/Media | : | Yes/No |
| 2. | Whether to be reported in Digest/Journal | : | Yes/No |

Heard.

Suit filed by respondent before the trial Court of learned District Judge Udhampur was decreed in exparte in terms of judgment rendered on 10.01.2008. Appellant filed application under Order 9 Rule 13 CPC on 12.02.2008 for setting aside of exparte decree. The application was dismissed in terms of impugned order dated 29.08.2009 passed by the learned District Judge Udhampur who arrived at the conclusion that the application seeking setting aside exparte decree should have been preferred latest by 11.02.2008 and since the same had been filed on 12.2.2008, it was barred by limitation.

The decree having been passed in exparte on 10.01.2008, application for setting aside the same was required to be filed within 30 days from the date of decree in terms of Article 164 of the Limitation Act. While computing the period of limitation, the date of decree has to be excluded. Therefore, appellant could have preferred the application under Order 9 Rule 13 CPC within 30 days, i.e. up to 09.02.2008. The time spent in obtaining the certified copy of exparte decree had to be excluded while computing the prescribed period of limitation. From impugned judgment, it emerges that the appellant applied

for obtaining copy of the decree on 23.01.2008 and the certified copy was delivered to him on 24.01.2008. Thus, he was entitled to a grace period of two days. The application under Order 9 Rule 13 CPC could thus be filed on or before 11.02.2008. That was not done. The appellant approached the trial Court with application under Order 9 Rule 13 CPC on 12.02.2008, i.e. after a delay of one day and his application came to be dismissed for being barred by limitation. Learned Court below has observed that 11.02.2008 happened to be a working day of the Court. Thus, the appellant could not claim that he was unable to file appeal on the last day of limitation period owing to a public holiday etc.

It is an irony of fate that the appellant's motion for setting aside of *exparte* decree came to be dismissed for a delay of one day. Appellant projected the delay as a *bonafide* mistake on his part in calculation of the time besides pleading before the trial Court that the *exparte* decree was passed in consequence of inability of learned counsel for appellant to appear at the hearing of the suit on account of having fractured his leg and being confined to bed. It is, therefore, clear that an attempt was made to explain the delay leading to the passage of *exparte* decree as also delay in filing of application under Order 9 Rule 13 CPC.

It is well settled that rules of procedure are handmade tools of justice and same cannot be applied with such rigor so as to defeat the ends of justice. It is also well settled that in dealing with condonation of delay the Court should not adopt a hyper technical approach. The policy should be to encourage adjudication on merit. Such policy can be advanced

only by adopting a liberal approach, more particularly when a good cause is assigned.

In the given circumstances of the case, it is found that the dismissal of appellant's application under Order 9 Rule 13 CPC for being barred by limitation of one day has occasioned failure of justice. The reasons assigned in the application, in my considered opinion, do carve out a case for condonation of delay of one day. For the foregoing reasons, this appeal is allowed, the impugned order is set aside and delay of one day involved in preferring the application under Order 9 Rule 13 CPC is condoned. The matter is remanded back to the trial Court for consideration of application under Order 9 Rule 13 CPC on its merits. Parties to appear before the Court below on 24th December, 2014.

(Bansi Lal Bhat)
Judge

Jammu:
22.11.2014
Varun Bedi