

CASE NO.:
Appeal (civil) 2914 of 2002

PETITIONER:
MUNICIPAL CORPORATION, GWALIOR

Vs.

RESPONDENT:
RAMCHARAN (D) BY LRS. & ORS.

DATE OF JUDGMENT: 24/04/2002

BENCH:
R.C. Lahoti & D.M. Dharmadhikari

JUDGMENT:

R.C. Lahoti, J.

Leave granted.

A suit for declaration of title and recovery of possession filed by the plaintiff-respondents was dismissed by the trial Court but decreed in appeal. The Municipal Corporation, the appellant before us, filed a second appeal in the High Court. There was a delay of 39 days in filing the second appeal. The memo of appeal was accompanied by an application under Section 5 of the Limitation Act seeking condonation of delay in filing the second appeal. The reason set out for condonation of delay was that the Municipal Corporation had appointed an advocate to appear on its behalf who failed to appear in the first appellate Court when the appeal was heard, on account of some confusion in noting the date of hearing in the court case diary maintained in the office of the advocate and it was the belated knowledge of the judgment and decree of the appellate Court on the part of the advocate, and consequently on the part of the Municipal Corporation, which had caused the delay in filing the appeal. Affidavits by the Revenue Officer and the counsel representing the Municipal Corporation were filed in the High Court. The application was vehemently contested on behalf of the plaintiff-respondents. The High Court formed an opinion that sufficient cause within the meaning of Section 5 of the Limitation Act was not made out and, therefore, directed the application under Section 5 of the Limitation Act to be dismissed and consequent thereupon the appeal itself was dismissed as barred by time. The Municipal Corporation has filed this appeal by special leave.

The contest before this Court has been more vehement than what it appears to have been before the High Court. It is true that sanctity attaches with the record of court proceedings. However, in the present case the question is not so much of casting a doubt on the record of proceedings maintained by the Court as is on testing the bona fides of the counsel who filed his own affidavit in support of the application under Section 5 of the Limitation Act. The counsel and the Revenue Officer, who filed their affidavits, do not have any personal interest in the matter. The learned advocate appearing for the Municipal Corporation was not going to gain anything either by remaining absent at the time of hearing of the first appeal or by assigning a false cause for his non-appearance at the time of hearing.

Valuable rights of the parties in an immoveable property are involved. On the totality of the facts and circumstances of the case, we are of the opinion that the High Court ought to have been taken a liberal, and not a rigid and too technical a view of the issue before it and should have condoned the delay in filing the appeal and concentrated on examining whether the appeal raised any substantial question of law worth being heard by the High Court. In our opinion, a sufficient cause for condoning the delay in filing the appeal before the High Court is made out.

The appeal is allowed. The impugned order of the High Court is set aside. The appeal is restored on the file of the High Court. The delay in filing the appeal shall stand condoned. The appeal filed by the Municipal Corporation shall now be taken up for hearing in accordance with law. No order as to the costs.

.....J.
(R.C. LAHOTI)

.....J.
(D.M. DHARMADHIKARI)

April 24, 2002.