

REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. _____ OF 2010

[Arising out of SLP (C) No. 30266 of 2008]

RAMJI PANDEY & ORS.

..... Appellants

Versus

SWARAN KALI

.....Respondent

JUDGMENT

Dr. Mukundakam Sharma, J.

1. Leave granted.
2. The question that falls for determination in this appeal is whether to uphold the impugned judgment and order passed by the High Court of Allahabad or to restore the

order dated 24.02.1992 passed by the Additional District Judge, Allahabad. By the impugned judgment and order dated 28.02.2006 the Allahabad High Court has set aside and quashed the order dated 24.02.1992 passed by the Additional District Judge, Allahabad in Misc. Case no. 494 of 1991.

3. The respondent herein filed suit no. 508 of 1983 before the Additional Civil Judge, Allahabad against the appellants for the relief of declaration that she was also one of the owners and co-sharers in the property constituting a house numbering 172, Lookerganj, Allahabad and her name should also be shown as one of the purchasers of the said house in dispute in the sale deed alleged to have been executed in their favour by its earlier owner. The aforesaid suit was earlier contested by the appellants herein but subsequently they failed to appear and consequently an *ex parte* decree was passed in the said suit in favour of the respondent on 10.05.1988 by the Additional Civil Judge.

4. Thereafter, the appellants herein filed a recall application under Order IX Rule 13 Code of Civil Procedure [for short "C.P.C."] for setting aside the *ex parte* decree. The said application however after consideration was rejected by the Additional Civil Judge, Allahabad vide order dated 04.05.1989. Aggrieved by the said order, the present appellants filed Miscellaneous Appeal no. 154 of 1989 before the Additional District Judge, Allahabad which was allowed with the direction that the regular suit no. 508 of 1983 be proceeded in accordance with law. The said judgment was passed by the District Court on 04.01.1991.
5. At the time when the original suit was filed, the value of the suit was more than Rs. 20,000/- and, therefore, the pecuniary jurisdiction to file the said appeal lay in the High Court and not in the District Court. Therefore, aggrieved by the order dated 04.01.1991 passed by the District Court allowing the appeal, the respondent filed a writ petition which was registered as Writ Petition No. 9638 of 1991. However, during the interregnum period and while the said petition was pending, the pecuniary jurisdiction of the

District Court was increased from Rs. 20,000/- to Rs. 5 lacs and, therefore, appropriately at the time of passing of the order, the jurisdiction was with the District Court. The High Court, therefore, passed an order that it would be open to the defendant to move an application for condonation of delay before the District Judge.

6. In terms of the aforesaid order of the High Court, the appellants moved an application before the Additional District Judge, Allahabad under Section 5 read with Section 14 of the Limitation Act [for short “the Act”] and an appeal was registered as appeal no. 494 of 1991. The respondent herein filed an objection to the application filed by the appellants under Section 5 read with Section 14 of the Limitation Act contending *inter alia* that the appellants herein did not act in good faith nor had they acted with due care and attention so as to enable them to get the benefit of Section 14 of the Limitation Act and, therefore, the time spent by them in pursuing the matter in the wrong forum should not and cannot be condoned.

7. The plea taken by the appellants in the application under Section 5 read with Section 14 of the Act was that they had been wrongly advised by the senior counsel that pecuniary jurisdiction of the High Court was that of the District Court and, therefore, the defendants abided by the advice given to them by the senior counsel and pursued the matter in that forum until the same was decided.
8. On the other hand, the respondent had argued that the appellants had knowledge of the suit which had been filed but failed to appear in the said suit and also failed to contest the suit and, therefore, the same was decreed. The application filed for setting aside the decree was also rejected by the Additional Civil Judge, Allahabad on 04.05.1989. Against the said order, appellants filed Miscellaneous Case no. 154 of 1989 in the wrong forum which, in fact, was also pointed out by the respondent herein in the objection filed on 01.07.1989. It was pointed out clearly in the said objection at para 5 that the said District Court has no pecuniary jurisdiction to entertain the appeal arising out of the original suit no. 508 of 1983 being

valued at Rs. 46,000/- and that the appeal was required to be filed before the High Court.

9. Despite the aforesaid objections taken by the respondent, the Additional District Judge allowed the said application by the order dated 24.02.1992. In the order dated 28.02.2006 the High Court held that the order passed by the Additional District Judge was incorrect and unjustified as this was not a case for grant of indulgence under Section 14 of the Act as it could not have been said that the appellants herein acted in good faith or with due diligence in order to get the benefit of Section 14 of the Act. Since the aforesaid order is challenged in the present appeal and since notice was issued pursuant to which the respondent has also entered appearance, we heard the learned counsel appearing for the parties at length.

10. The counsel appearing for the parties made their respective submissions and in support of their contentions they also relied upon and referred to some of the documents on records.

11. The suit was filed by the respondent herein in the Court of Additional Civil Judge, Allahabad for a declaration that she was a co-sharer in the suit property to the extent of one half share in the same wherein she also sought for a direction that her name be entered in the agreement dated 01.07.1983 and sale deed dated 16.01.1984. Although, the appellants herein filed a written statement, they failed to appear in the suit thereafter and, therefore, an *ex parte* decree was passed in favour of the respondent vide judgment and order dated 10.05.1988. The recall application filed by the appellants under Order IX Rule 13 C.P.C. for setting aside the *ex-parte* decree was rejected by the Additional Civil Judge on the ground that there was negligence and lack of due diligence on the part of the appellants in pursuing the matter and, therefore, they are not entitled to the relief of setting aside the *ex parte* decree. In terms of the valuation of the suit, an appeal from the said order should have been preferred before the High Court wherein the pecuniary jurisdiction to file the said appeal lay at the relevant time. Ignoring the said specific provision, an

appeal was preferred before the District Court. The aforesaid appeal filed was allowed and it was directed that the regular suit no. 508 of 1983 be proceeded with in accordance with law which was tried and decided. Since the aforesaid order was without jurisdiction as the District Court did not have pecuniary jurisdiction a writ petition was filed in the High Court by the respondent which was entertained. Since during the pendency of the said writ petition in the High Court the pecuniary jurisdiction of the District Court was increased from Rs. 20,000/- to Rs. 5 lacs, therefore, the High Court held that now an appeal would lie before the District Court and, therefore, the same could be filed with an application for condonation of delay before the District Judge.

12. The appellants moved the said application under Section 5 read with Section 14 of the Limitation Act. At the time of hearing of the said appeal, it was pointed out in the objection filed by the respondent against the application under Section 5 read with Section 14 of the Act at a very early stage that such an appeal is not maintainable before

the District Court as it lacked pecuniary jurisdiction to entertain the said appeal and, therefore, it would have been appropriate for the appellants to withdraw the appeal and file appropriate proceedings before the High Court. The same having not been done and having obtained an order in their favour which *ex facie* was illegal and without jurisdiction the appellants are not entitled to take the benefit of Section 5 read with Section 14 of the Limitation Act.

13. The High Court considered the entire facts and circumstances of the case and then held that the aforesaid objection of the respondent is well-founded, particularly in view of the fact that at the very initial stage itself the respondent had taken a clear objection that the District Court did not have jurisdiction to try and decide the appeal. Not only did the appellants ignore the said objection, but the Court while allowing the application filed by the appellants, also ignored the said fact which was specifically pleaded in the objection filed by the respondent.

14. The aforesaid conclusions which have been arrived at by the High Court are relevant facts. Considering the entire records, we find that the appellants are not only negligent but have been acting and pursuing the entire matter without due diligence as would be apparent from the fact that they initially failed to pursue the suit in right earnest, having failed to appear and contest the suit, due to which an *ex-parte* decree had to be passed by the court. Even thereafter, they failed to file the appeal in the proper forum, which was brought to their notice right at the initial stage by the respondent's filing of an objection. Despite the said fact, they did not take any step to withdraw the same and continued with the proceedings which was void *ab initio* and without jurisdiction and also obtained an order in their favour. Even before the High Court, where the impugned order was passed the appellants did not appear on the date of arguments or even on the previous dates. Absence of due diligence in pursuing the matter is writ large on the face of the records. Suit of 1983 was decreed *ex-parte* in the year 1988 and thereafter the proceeding for setting aside the *ex-*

parte decree is being dragged on one way or the other by filing application / appeal and is dragging the matter till date.

15. In the list of dates the appellants themselves have stated that they had come to know about the passing of the impugned order dated 28.02.2006 by the High Court only on 30.08.2007 and they filed a regular application only on 12.09.2007 and by order dated 05.10.2007 the said regular application was rejected on the ground of laches because the counsel of the respondent was not served. Even thereafter, the appellants again filed a regular application for service upon the respondent by registered post which was also rejected by order dated 02.09.2008 by the High Court.

16. In view of the facts delineated herein, we are of the considered opinion that the conduct of the appellants throughout lack due diligence and they have been pursuing the entire matter negligently.

17. Therefore, we find no reason to interfere with the detailed and speaking order passed by the High Court. The appeal has no merit and is dismissed with no order as to costs.

.....J.
[Dr. Mukundakam Sharma]

.....J.
[Anil R. Dave]

New Delhi,
October 25, 2010.