2025 INSC 230

NON-REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. OF 2025
(Arising out of S.L. P. (Civil) No.19657 OF 2024)

SURENDRA KUMAR JAIN **... Appellant**

VERSUS

SANTOBAI & ANOTHER **... Respondent**

J U D G M E N T

Rajesh Bindal, J.

1. Leave granted.

2. The present appeal has been filed by the appellant aggrieved by the order[1] of the High Court[2] allowing the interim application[3] filed by the respondents seeking condonation of delay of 2,422 days in filing an application under Order XLI Rule 19 of the Code

[1] Order dated 27.02.2024
[2] High Court of Madhya Pradesh, Bench at Gwalior
[3] I.A. No. 2677 of 2021

of Civil Procedure (hereinafter referred to as the 'CPC'), without assigning any reason.

3. Briefly, the facts are that husband of respondent no. 1 and father of Respondent no.2, one late Mangaliya Kushwaha[4] entered into an agreement to sell[5] the land bearing Survey No.1169 measuring 0.146 hectares, Survey No.1170 measuring 0.334 hectares, Survey No.1171 measuring 0.899 hectares situated at Village Karhiya, Tehsil Chinuar, District-Gwalior, Madhya Pradesh (**hereinafter referred to as the 'suit property'**) with the appellant herein for total sale consideration of ₹2,00,000/-, and received a sum of ₹1,50,000/- as earnest money. As per the terms of the said agreement to sell, late Mangaliya Kushwaha was to execute the sale deed on or before 25.06.2006 upon receiving the balance sale consideration of ₹50,000/-

4. The appellant filed a civil suit[6] against late Mangaliya Kushwaha seeking specific performance of the agreement to sell before Trial Court[7]. The suit was decreed by the Trial Court vide judgment and decree dated 17.11.2009.

[4] Mangaliya Kushwaha died on 11.04.2015
[5] Agreement to sell dated 25.06.2005
[6] Civil Suit No. 7A/09
[7] Court of 2nd Additional District Judge, Dabra, District Gwalior, Madhya Pradesh

5. Being dissatisfied with the aforesaid judgment and decree, late Mangaliya Kushwaha preferred appeal[8] before High Court. As court fee was not affixed with the appeal memo and other defects were found in the appeal, the court directed him to cure the same. Despite repeated opportunities he failed to deposit court fee and cure the defects. Resultantly, the said appeal was dismissed by the High Court *vide* order dated 22.08.2013 recording reasons that appellant therein failed to deposit court fee as per order dated 15.07.2013 and also for want of prosecution.

6. The appellant filed Petition[9] for execution of the judgment and decree dated 17.11.2009 and execution of sale deed in his favour. During pendency of the execution petition, Mangaliya Kushwaha died on 11.04.2015. The appellant filed an application under Order XXII Rule 4 of CPC for bringing legal representatives of late Mangaliya Kushwaha, namely Santobai w/o Late Mangaliya Kushwaha, Hakim Singh, Kalyan Singh, Devi Singh, Smt. Nattho w/o Late Shri Babulal Kushwah and Smt. Sona w/o Late Shri Bhavani Kushwah, on record. Notices were issued. As per service report, the legal representatives of late Mangaliya Kushwaha refused to accept summons. As the legal

[8] First Appeal No. 41 of 2010
[9] Case No. 7A/2009

representative of late Mangaliya Kushwaha failed to appear before the executing court and raise objection to the draft sale deed, the court vide order dated 18.05.2018 directed execution of sale deed in favour of the appellant. The sale deed was executed in favour of the appellant by the reader of the Court namely R.K. Jain under the authority of the court and the same was registered on 28.07.2018. Subsequently, *vide* order dated 03.07.2019 the Tehsildar directed patwari to mutate the name of the appellant in revenue records and the appellant was put in possession of the suit property.

7. On 05.06.2021 the respondents filed an application[10] under Order XLI Rule 19 of CPC seeking setting-aside of the order dated 22.08.2013 and restoration of the First Appeal No.41 of 2010. The respondents also filed an application[11] under Section 5 of the Limitation Act, 1963 seeking condonation of delay in preferring the application under Order XLI Rule 19 of CPC stating therein that they were not having knowledge about filing of the appeal by late Mangaliya Kushwaha and dismissal of the same. Further, they also pleaded that they came to know about dismissal of appeal only when the name of appellant was mutated in the revenue records. The said interim

[10] Miscellaneous Civil Case No.612 of 2021.
[11] I.A. No.2677 of 2021.

application was allowed by the High Court vide impugned order dated 27.02.2024 without assigning any reason. Resultantly, the Court restored the first appeal. The said order is under challenge before this Court.

8. Notice in the present appeal was issued on 14.08.2024 and operation of the impugned order was stayed. The matter was listed before the Registrar on 13.11.2024. As per the office report, service of notice to the respondents was complete, however, no one entered appearance on their behalf. The matter was directed to be listed before the Court. On the next date of hearing, i.e., 06.01.2025, when the matter was listed before the Court again no one appeared on behalf of the respondents. This Court deferred adverse orders by giving last opportunity to the respondents to appear. Again, when matter is listed today, no one has entered appearance. It is in this situation that we have proceeded to hear the counsel for the appellant on merits.

9. In this factual matrix one course could be to set-aside the impugned order and remit the matter back to the High Court for consideration of the application filed by the respondents/applicants afresh. However, we do not deem it appropriate to adopt that procedure considering the facts of the case, and that the litigation started way back in the year 2008.

10. As has already been noticed, in the impugned order the High Court recorded no reason for condoning huge delay in filing application for restoration of the appeal, which was dismissed for non-prosecution and failure to deposit requisite court fee on 22.08.2013. The order reads as under:

> "Heard on I.A. No.2677/2021, an application under Section 5 of Limitation Act for condonation of delay.
>
> For the reasons stated in the application, the same is allowed and delay is hereby condoned.
>
> This is an application for restoration of F.A.No.41/2010, which stood dismissed for want of prosecution by order dated 22/08/2013.
>
> The application is vehemently opposed by the counsel for the respondent.
>
> For the reasons assigned in the application, which is supported by an affidavit, sufficient cause is made out for restoration of F.A.No.41/2010. Hence, the application is allowed and F.A.41/2010 is restored to its original number.
>
> Appellants are directed to pay the Court fee as pointed out by the office within a period of one month from today."

11. The application has also been placed on record. From the averments made in the application it is evident that the period of delay, condonation of which was sought, had not been mentioned. It was stated therein that the names of the respondents/applicants were mentioned in the revenue record as owner in possession, as the suit property had already been partitioned. The present appellant got the

sale deed registered in execution proceeding without notice to the respondents/applicants. The respondents/applicants did not have knowledge about the filing of appeal by late Mangaliya Kushwaha, their predecessor in interest and the dismissal thereof on 22.08.2013. The respondents/applicants came to know about this when the sale deed was executed by the appellant and the names of the respondents/applicants were removed from the revenue record and mutation was entered in favour of the present appellant. The respondents/applicants have already challenged the order of the mutation in appeal, which is still pending. It was at that time they came to know about dismissal of the appeal vide order dated 22.08.2013 and applied for its certified copy on 09.04.2021, which was received on the same day. The application is dated 05.06.2021. No explanation is available as to why it took about two months to file the application after the certified copy of the order was admittedly received.

12. To the aforesaid application, reply was filed by the present appellant, the decree-holder. It was stated therein that the respondents/applicants were also impleaded as parties in the execution proceeding. It was in the reply to the application that the present appellant mentioned that there was a delay of 2,422 days in filing the application. From a perusal of the aforesaid contents of the

application we find that the delay in filing the application seeking restoration of the appeal, which was dismissed for non-prosecution and non-payment of requisite court-fee, was 2,422 days, which had not been explained sufficiently by the respondents/applicants seeking condonation of delay. The High Court without recording any reason whatsoever and by passing a cryptic order had allowed the same.

13. For seeing the conduct of the applicants, we need to refer to the genesis of the litigation as well, and the proceedings that culminated into passing of the decree by the Trial Court and its execution.

14. It is evident from the record that late Mangaliya Kushwaha (who died on 11.04.2015), husband and father of respondent Nos.1 and 2, respectively had entered into an agreement to sell the suit property with the appellant for a total consideration of ₹2,00,000/-. Earnest money of ₹1,50,000/- was received. The sale deed was to be executed on or before 25.06.2006. On failure of the vendor-late Mangaliya Kushwaha to execute the sale deed, the appellant-vendee filed Civil Suit No.7A/2009 seeking specific performance of the agreement to sell. The same was decreed by the Trial Court on 17.11.2009. The appellant deposited the balance sale consideration of ₹50,000/- in the Court on 24.12.2009. Challenging the judgment and decree of the Trial Court,

late Mangaliya Kushwaha filed appeal before the High Court bearing F.A. No.41/2010. As is evident from the record no court fee was affixed with the appeal memo.

15. From a perusal of various orders passed by the High Court in the aforesaid appeal, it is evident that the same was presented on 18.02.2010. As per the office report, the registry raised the following objections:

> "i. No court fee affixed with appeal memo and certified copy of decree.
>
> ii. Bar stamp not affixed with Vakalatnama."

16. The order passed by the Assistant Registrar on 22.02.2010 shows that no one had appeared for the appellant in the appeal before the High Court. The appeal was directed to be listed after 7 days if the defects are cured, for which liberty was granted. Again on 03.03.2010 and 15.03.2010 time was granted to cure the defects. The order passed by the Assistant Registrar on 25.03.2010 records that court fee and bar stamp had not been filed by the appellant therein despite opportunity being granted. The matter was directed to be listed in Court.

17. On 29.03.2010, when the matter was listed in the Court, on request of counsel for the appellant therein, one weeks' time was granted for curing the defects and the appeal was to be listed

thereafter for admission. Thereafter, on three dates the matter was listed in Court and before the Assistant Registrar, however, the defects were not cured.

18. When the matter was listed before the Court on 15.07.2013, no one appeared before the Court on behalf of the appellant therein. It was pointed out by the counsel for the respondent therein that court fee had not been paid. The Court directed the appellant therein to deposit the requisite court fee failing which the appeal was to stand dismissed due to non-payment of court fee. The appeal was directed to be listed on 22.08.2013. The order passed on 15.07.2013 is extracted below:

> "None for the appellant.
>
> Ms. Shweta Bothara, Advocate for the respondent No.1.
>
> Shri R.D. Agarwal. P.L. for the respondent No.2/State.
>
> None is appearing on behalf of the appellant to purse the appeal.
>
> Counsel for the respondent submits that Court fees is not being paid by the appellants for a long period.
>
> The appellant is directed to deposit the Court fees as per provision of the Court fees Act, failing which, the appeal shall stand dismissed due to non-payment of the Court fees.
>
> Appeal be listed for further order on 22.08.2013."

19. When the matter was listed on 22.08.2013 again no one appeared for the appellant therein. Even court fee had not been

deposited. Hence, the Court dismissed the appeal for non-payment of requisite court fee and also for non-prosecution.

20. The execution petition filed by the appellant was already pending and having come to know that the judgement-debtor/Mangaliya Kushwaha had expired on 11.04.2015 an application dated 30.06.2015 was filed for impleading his legal representatives.

21. The order passed by the Executing Court dated 11.10.2017 records that notices sent to the legal representatives of the deceased judgment debtor were returned back with the report of refusal to accept the notice. Draft sale deed was placed on record by the appellant/decree-holder. The matter was fixed for further consideration on 13.11.2017.

22. On 18.05.2018 again no one represented the legal representatives of deceased judgment-debtor. The Court appointed Shri R.K. Jain to execute the sale deed on behalf of the Court. The sale deed was registered on 28.07.2018.

23. After registration of the sale deed, the appellant moved an application before the Tehsildar concerned seeking mutation of his name in the revenue record. The order passed by the Tehsildar on 03.07.2019 records that no objections for recording the mutation in the

name of the appellant had been received within time, hence, in terms of the sale deed dated 28.07.2018 the suit property was directed to be recorded in the name of the appellant.

24. It is the pleaded case of the appellant that the demarcation was carried out and the appellant was put in possession of the suit property. Meaning thereby this entire exercise took place in July-August, 2019. Taking into consideration the aforesaid dates and the pleading in the application for condonation of delay filed by the respondents/applicants, it is evident that the respondents had the knowledge of the decree, filing of appeal and dismissal thereof. It is the pleaded case of the respondents/applicants in the application for condonation of delay that they came to know about the proceedings, when mutation was recorded in the name of the present appellant. Not only this, he had been put in possession of the suit property in execution of decree. Still, they had taken about two years in filing the application seeking restoration of appeal, for which we do not find any case is made out as the party has to remain vigilant to pursue his/their case.

25. The appeal is allowed and the impugned order passed by the High Court allowing the application for condonation of delay is set

aside. As a consequence, the application for condonation of delay is dismissed.

.....J.
(M.M. SUNDRESH)

.....J.
(RAJESH BINDAL)

New Delhi
January 17, 2025.