IN THE HIGH COURT OF MADHYA PRADESH AT JABALPUR

BEFORE

HON'BLE SHRI JUSTICE VIVEK JAIN

ON THE 17th OF JUNE, 2026

CIVIL REVISION No. 47 of 2017

RAMRATI

Versus

THE STATE OF MADHYA PRADESH AND OTHERS

Appearance:

Shri Kartik Dubey - Advocate for the applicant.

Shri Aditya Choubey - G.A. with Shri K. K. Gautam - P.L. for the State.

ORDER

The present revision has been filed challenging the order dated 28.09.2016 passed by the trial Court in condoning the delay by allowing application under Section 5 of Limitation Act in filing first appeal under Section 96 of C.P.C. against the judgment and decree dated 30.06.2004. The appeal was filed on 28.09.2016 against the judgment and decree dated 30.06.2004 with the delay of exact 12 years.

2. Counsel for the applicant has argued that no reason was assigned, but in the application for condonation of delay. It was a case where the State was duly served in the suit, it started appearing in the suit and earlier the State was declared ex-parte, but thereafter application under Order 9 Rule 7 CPC had been filed and the ex-parte proceedings were set aside. Thereafter, the counsel for the State started appearing but after some time stopped

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appearing in the suit. Therefore, it was a case where the concerned authorities of the State had full knowledge of pendency of the suit and therefore, the delay of 12 years in filing the regular appeal against the judgement and decree dated 30.06.2004 could not have been condoned by the Appellate Court. It cannot be comprehended that a party, who is having knowledge of pendency of suit and stops to take care of the said suit suddenly, then for 12 years remained ignorant about the fate of the suit, and came to know about decision of the suit after 12 years. It is not a case where there was any dispute that whether the State was served or not, but it was a case where the State was served and was duly appearing in the suit and then stopped appearing in the suit.

3. *Per contra*, it is contended by learned counsel for the State that the suit was filed in the year 1996 and the suit had been rejected by allowing application under Order 7 Rule 11 CPC on 17.11.1997, which was challenged in appeal by the plaintiff and the said appeal was allowed on 16.02.2000 and then the suit was restored. In this confusion, the counsel for the State could not appear in the trial court after remand. It is argued that it is a valuable government land and there should be some leniency in condoning delay in favour of the State, which functions through impersonal machinery.

4. This Court has heard learned counsel for the rival parties at length and perused the documents on record.

5. It is seen that the suit was initially filed in the year 1996 and then it was dismissed by allowing application under Order 7 Rule 11 CPC on 17.11.1997. The said application was challenged in Appeal No.52A of 1997

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by the present petitioner plaintiff and the said appeal was allowed on 16.02.2000 whereby the matter was remanded back to the Civil Court for adjudication on merits.

6. The appeal was duly allowed in presence of counsel for the State Smt. Narayani Upadhyay, whose presence is duly marked in the decree of the Appellate Court, whereby the matter was remanded to this trial Court for adjudication on merits.

7. This Court has gone through the order sheets of the trial Court after remand and from perusal of the order sheets, it is observed by this Court that after remand the parties were to appear before the trial Court on 28.02.2000, but none appeared for the State on the said date. Thereafter on 27.07.2000 a counsel appeared for the State. On 01.08.2000, an application under Order 9 Rule 7 CPC was filed by the State, which was marked as IA No. 5. The said application IA No.5 was allowed on 08.05.2001 and the ex-parte proceedings against the State was set aside by the trial Court.

8. Thereafter, the counsel for the State continued appearing before the trial Court, but after February, 2004 the counsel for the State stopped appearing before the trial Court. The counsel for the State did not appear before the trial Court at all after February, 2004 and the trial Court continued with the trial of the case. The defendant State was proceeded ex-parte and ex-parte decree was passed on 30.06.2004.

9. The appeal against the said ex-parte decree was filed exactly after 12 years in the year 2016. In the application for condonation of delay it has been pleaded that no information of the pendency of the case was available

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to the Officer in charge of the case and the counsel for the State lastly appeared on 12.02.2004 before the trial Court, but on 24.02.2004 once the counsel for the State did not appear, then it was obligatory for the trial Court to have issued fresh notice to the State and since the trial Court did not issue fresh notice, therefore, the delay caused in filing of the appeal is bona fide.

10. The aforesaid reason assigned in the application for condonation of delay does not contain any plausible reason much less any sufficient cause for condonation of delay. It is not the case where the State was not served, but it is a case where the State was served and initially it was proceeded ex-parte and then application for setting aside ex-parte was filed under Order 9 Rule 7 CPC, which was allowed by the trial Court and then the counsel for the State appeared up to February, 2004 and then stopped appearing after 12.02.2004.

11. If the State had filed application for setting aside ex-parte proceedings, then it was having knowledge of pendency of the case and it cannot be believed that the State Government with its battery of field officers like Collector, Additional Collector, Deputy Collectors, Tehsildars, Revenue Inspectors and Patwaris did not care to pursue the case after 12.02.2004 up to the year 2016. It depicts the highest level of negligence, which a machinery of the State can possibly exhibit and it seems to be the perfect example of utter abdication of the State functionaries from discharging their duties. It was a fit case to proceed departmentally and criminally against the then officers, but only to save them, the State seems to have filed appeal.

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12. A litigant should know that when the rights are crystallised, and 12 years is a long period enough where the rights should be crystallised. The Appellate Court has mechanically condoned the delay of as long as 12 years in filing of the appeal by the State, though the State had full knowledge of pendency of the suit, it was earlier proceeded ex-parte, it applied for setting aside ex-parte proceedings, which was permitted, but then again the counsel for the State stopped appearing before the trial Court and for the next 12 years, no care was taken by any functionary of the State in pursuing proceedings of the trial court.

13. In view of the aforesaid, this Court of the considered opinion that it was not a fit case for condonation of delay and the Appellate Court has erred in condoning the delay of 12 years in filing the regular appeal under section 96 CPC before the Appellate Court.

14. The impugned order of condonation of delay is set aside and the appeal filed by the State also stands rejected as barred by limitation.

15. Before parting with the matter, it is to be mentioned that our legal system which is based on English common law includes the public trust doctrine as part of its jurisprudence. The State is the trustee of all natural resources which are by nature meant for public use and enjoyment. Public at large is the beneficiary of the sea-shore, running waters, airs, forests and ecologically fragile lands. The State as a trustee is under a legal duty to protect the natural resources. In ***M.I. Builders (P) Ltd. v. Radhey Shyam Sahu, (1999) 6 SCC 464***, the Hon'ble Supreme Court further expanded the operation of the doctrine in case of a land of public use being handed over to

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a builder for construction of shopping complex.

16. Lately, a 3-judge Bench of the Hon'ble Supreme Court again applied the doctrine in the following manner in the case of ***T.N. Godavarman Thirumulpad, In re v. Union of India, (2022) 10 SCC 544*** in the following manner :-

> *34. This Court has highlighted the public trust doctrine in M.C. Mehta v. Kamal Nath [M.C. Mehta v. Kamal Nath, (1997) 1 SCC 388] and opined that the public trust doctrine is part of the law of land. In para 25 of the said judgment, as reported, this doctrine has been explained with reference to writings of Joseph L. Sax, Professor of Law, University of Michigan, the proponent of Modern Public Trust Doctrine : (SCC pp. 407-408)*
> *"25. The public trust doctrine primarily rests on the principle that certain resources like air, sea, waters and the forests have such a great importance to the people as a whole that it would be wholly unjustified to make them a subject of private ownership. The said resources being a gift of nature, they should be made freely available to everyone irrespective of the status in life. The doctrine enjoins upon the Government to protect the resources for the enjoyment of the general public rather than to permit their use for private ownership or commercial purposes. According to Professor Sax, the public trust doctrine imposes the following restrictions on governmental authority: 'Three types of restrictions on governmental authority are often thought to be imposed by the public trust : first, the property subject to the trust must not only be used for a public purpose, but it must be held available for use by the general public; second, the property may not be sold, even for a fair cash equivalent; and third the property must be maintained for particular types of uses."*

17. The said doctrine applies to all resources that are held by the State in trust for the common citizen, and land is one of such resources. The State has been entrusted with that property by the citizens, and it holds it in trust for them. State is not a living being. It acts through its functionaries/public servants, who become the heart and life of the State, and fulfill the obligations of the State for preserving the property held in Trust for the

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Public. Section 405 IPC, defines Criminal Breach of Trust, while Section 409 contains special provisions of some specified Trustees, including Public Servants.

18. The concerned authority of the State is therefore, set at liberty to initiate suitable departmental and criminal action against the then Collector, Additional Collectors, Deputy Collectors, Tahsildars, Naib Tahsildars, Revenue Inspectors, Patwaris etc. for they having exhibited their utter negligence in pursuing a case involving government land and having breached the trust of the public of the State, because the State claims ownership in lands for public good and holds the lands in Trust for the general public. The State having breached public trust in terms of the doctrine of public trust, the concerned authority of the State is at liberty to initiate criminal and departmental action against its erring and negligent officers.

19. With the aforesaid observation, the revision is **allowed**.

(VIVEK JAIN)
JUDGE

rj

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