



IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

CMPMO No.42 of 2022

Decided on: 09.09.2025

Sh. Rajinder Singh Thakur & another ... Petitioners

Versus

Sh. Dhaminder Kunmar Chadha ... Respondent

Coram

Hon'ble Mr. Justice Ajay Mohan Goel, Judge.

Whether approved for reporting?¹ Yes

For the petitioners : Mr. Ajay Sharma, Advocate.

For the respondent : Proceeded *ex parte*.

Ajay Mohan Goel, Judge (Oral)

By way of this petition, the petitioners have challenged order dated 02.03.2020 (Annexure P-1), passed by the Court of learned Additional District Judge (II), Shimla, H.P., in terms whereof, while allowing an application filed by the petitioners alongwith an appeal preferred under Section 96 of the Civil Procedure Code and Section 5 of the Limitation Act for condonation of delay in filing the appeal, directed the petitioners to deposit half of the decretal amount within four weeks as a pre-condition for condonation of delay. The petitioners have also assailed the subsequent order passed by the learned Appellate Court, dated 23.09.2021, in terms whereof, the appeal was dismissed for non-compliance of the earlier order dated 02.03.2020.

¹ Whether reporters of the local papers may be allowed to see the judgment?

2. I have heard learned Counsel for the petitioners and have also gone through the impugned orders.

3. This Court is of the considered view that the orders under challenge are *per se* perverse and not sustainable in the eyes of law. As the petitioners herein had approached the learned Appellate Court with an appeal which was time barred, alongwith an application under Section 5 of the Limitation Act, praying for condonation of delay in filing the appeal, at the most in case the learned Court below was inclined to show any indulgence as far as the said application is concerned, it could have allowed the application by imposing such costs as the learned Court would have deemed fit. However, learned Appellate Court erred in allowing of the application filed under Section 5 of the Limitation Act subject to deposition of 50% of the decretal amount. In light of the fact that the decree that was suffered by the petitioners was a money decree, they had the right to assail the same under Section 96 of the Civil Procedure Code without depositing the decretal amount. Of course, the consequences were to ensue in the event of the appeal being filed and the decretal amount not being deposited, as then the filing of the appeal could not have come in the way of the Decree Holders in having the decree passed by the learned Trial Court executed.

However, learned 1st Appellate Court had no authority and to issue a direction that the application under Section 5 of the Limitation Act is allowed subject to deposition of 50% of the decretal amount which amounted to Rs.1,25,000/-.

4. Therefore, this Court has no hesitation in holding that the order passed by the learned Appellate Court on 02.03.2020, to the effect that the application filed under Section 5 of the Limitation act was allowed subject to deposition of half of the decretal amount is perverse and not sustainable in the eyes of law. Further, as the subsequent order dated 23.09.2021 is a result of the earlier order passed by the learned Appellate Court which has been held to be bad by this Court, therefore, but natural as the foundation of the subsequent order has already been struck off by this Court, the subsequent order is also not sustainable in the eyes of law and the same is also accordingly set aside.

5. Accordingly, in light of the above observations, this petition is allowed. The orders under challenge, passed by the learned Appellate Court are set aside. The application filed under Section 5 of the Limitation Act alongwith the appeal that was preferred by the petitioners under Section 96 of the Civil Procedure Code before the 1st Appellate Court is hereby allowed by condoning

the delay subject to deposition of an amount of Rs.15,000/- in the Chief Justice Disaster Relief Fund, 2025 within a period of four weeks from today. The petitioners through Counsel are directed to appear before the learned 1st Appellate Court concerned on 15.10.2025. In the event of costs amount having been paid in the Chief Justice Disaster Relief Fund, 2025, the learned 1st Appellate Court shall issue notice to the respondents therein in the main appeal, which thereafter, shall be heard on merit. However, in case the costs are not deposited by the petitioners within the said period, then this order will loose its efficacy.

6. The petition stands disposed of. Interim order, if any, stands vacated. Pending miscellaneous application(s), if any also stand disposed of accordingly. Record be sent back forth-with.

(Ajay Mohan Goel)
Judge

September 09, 2025
(Rishi)