

AJAY GUPTA

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v.

RAJU @ RAJENDRA SINGH YADAV

(Civil Appeal No. 5862 of 2016)

JULY 5, 2016

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**[KURIAN JOSEPH AND ROHINTON FALI NARIMAN, JJ.]**

*Limitation Act, 1963 – ss.4, 5 – Expiry of prescribed period when court is closed – On facts, last date for filing the suit was 31.12.2010, which was last day of winter vacation for court – Next day-01.01.2011 was a non-working Saturday – Disposal of application filed u/Or. 7 r. 11 on the ground that 01.01.2011 was non-working Saturday, thus, the suit filed on 03.01.2011 is within limitation – Held: In terms of s. 4, in case the prescribed period for any suit expires on a day when the court is closed, the suit may be instituted when the court reopens – Further in terms of s.5 no court or tribunal can extend the period of limitation for filing a suit – 01.01.2011 was not a holiday for the Registry – It was a non-working Saturday for the Judges to enable them to write judgments and regular hearing of cases not heard on a non-working Saturday – There is no question of any confusion, though such confusion also cannot save limitation to file a suit – Even for part of the day the registry was not closed – Even if any cause, beyond the control of the plaintiff is shown also, the only extension is what is permitted u/ s. 4 the period coming under court holiday – Thus, the impugned order is set aside – Application u/Or. 7 r 11 is allowed and suit is dismissed.*

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CIVIL APPELLATE JURISDICTION: Civil Appeal No. 5862 of 2016.

From the Judgment and Order dated 11.04.2012 of the High Court of Gwalior at Madhya Pradesh in Revision Petition No. 6 of 2012.

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Harshvardhan Surana, Sameer Kumar Shrivastava, Vibhor Vardhan, Advs. for the Appellant.

The Judgment of the Court was delivered by

**KURIAN, J.** 1. Leave granted.

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A           2. The impugned judgment on limitation to file a suit gives an interesting reading on reasoning:

B                     “Learned trial court has vide impugned order, disposed the application filed under Order 7 Rule 11 by the defendant on the ground that 01.01.2011 was non-working Saturday, therefore the Suit was filed on 03.01.2011 is within limitation. Although, there is no bar for filing of Suit on non-working Saturday but if the Suit is not filed on non-working Saturday under the assumption that it is non-working Saturday then the mistake of non-filing is a bonafide mistake, so the mistake is taken as bonafide mistake.”

C           3. It is not in dispute that the last date for filing the suit was 31.12.2010, the last day of winter vacation for court. 01.01.2011 was a Saturday, and even according to the High Court, it is non-working Saturday for the Judges for enabling them to write judgments and regular hearing of cases is not heard on a non-working Saturday. Obviously, it was not a holiday for the Registry and there is no question of any confusion, though

D           such confusion also cannot save limitation to file a suit.

E           4. Section 4 of The Limitation Act, 1963 (hereinafter referred to as ‘the Act’), dealing with “Expiry of prescribed period when court is closed”, no doubt, applies to suits as well, and in case the prescribed period for any suit, appeal or application expires on a day when the court is closed, the suit, appeal or application may be instituted, preferred or made on the day when the court reopens.

5. The explanation under Section 4 of the Act also makes it clear that:

F                     “*Explanation.* -A court shall be deemed to be closed on any day within the meaning of this section if during any part of its normal working hours it remains closed on that day.”

G           6. There is no case for anybody that even for part of the day, the Registry was closed. But Section 5 of the Act which deals with “Extension of prescribed period in certain cases”, applies only to appeals or applications and not to suits. Therefore, no court or tribunal can extend the period of limitation for filing a suit. Even if any cause, beyond the control of the plaintiff is shown also, the only extension is what is permitted under Section 4 of the Act, the period coming under court holiday.

H           7. Thus, both the trial court and the High Court have gravely gone

wrong on the first principles on the law of Limitation. Therefore, the impugned order is set aside. The application filed by the appellant under Order VII Rule 11 of The Code of Civil Procedure, 1908 is allowed. Recovery Suit No. 1/2011 on the file of the ADJ, Gwalior, Madhya Pradesh is dismissed. A

8. The appeal is allowed as above. There shall be no order as to costs. B

Nidhi Jain

Appeal allowed.