

Ratan Malla Vs. Smt. Sefali Malla

Ratan Malla Vs. Smt. Sefali Malla

SooperKanoon Citation : sooperkanoon.com/121321

Court : Guwahati

Decided On : Jul-24-2003

Judge : A.H. Saikia and T. Vaiphei, JJ.

Acts : [Hindu Marriage Act, 1955](#) - Sections 28(4) and 29(3); [Limitation Act, 1963](#) - Sections 2(1), 3, 4 to 24, 28, 29(2) and 29(3)

Appeal No. : C.M. Appl. No. 52 of 2003 (in MAT App. 1 of 2003)

Appellant : Ratan Malla

Respondent : Smt. Sefali Malla

Advocate for Def. : M. Kar Bhowmik, Sr. Adv. and R.K.P. Singh, Adv.

Advocate for Pet/Ap. : A.C. Bhowmik, Adv.

Disposition : Petition allowed

Prior history : 1. Heard Mr. A. C. Bhowmik, learned counsel for the appellant-petitioner and Mr. M. Kar Bhowmik, learned senior counsel, assisted by Mr. R. K. P. Singh, learned counsel for the respondent. 2. 4 (four) days' delay is the subject-matter of this condonation application. Mr. A. C. Bhowmik, learned counsel for the petitioner has contended that those few days delay, not being inordinate delay in preferring this belated appeal, i.e. MAT App. No. 01 of 2003, has been exclusively and sufficiently expla

Judgement :

1. Heard Mr. A. C. Bhowmik, learned counsel for the appellant-petitioner and Mr. M. Kar Bhowmik, learned senior counsel, assisted by Mr. R. K. P. Singh, learned counsel for the respondent.

2. 4 (four) days' delay is the subject-matter of this condonation application. Mr. A. C. Bhowmik, learned counsel for the petitioner has contended that those few days delay, not being inordinate delay in preferring this belated appeal, i.e. MAT App. No. 01 of 2003, has been exclusively and sufficiently explained in Paragraphs 3 and 4 of this petition and on consideration of those averments the delay in question may be condoned.

3. Refuting the submissions advanced on behalf of the petitioner, Mr. M. Kar Bhowmik, learned senior counsel for the respondent, has vehemently argued that in the instant case which is governed by the [Hindu Marriage Act, 1955](#) (for short 'the Act'), the provisions of the [Limitation Act, 1963](#) (hereinafter referred to as the Limitation Act') do not apply. Thus the question of condonation of any delay under Section 5 of the Limitation Act does not arise. According to him, the Act, being a special legislation, does provide distinctly a period of 30 (thirty) days for filing an appeal from the date of decree or order in Section 28(4) of the Act without contemplating any provision for filing of a belated appeal. More so, in the Schedule under the Limitation Act, there is no provision providing for an appeal under the Act. In view of this statutory position, there is no scope for condonation of any delay in preferring an appeal although the delay is only for four days as in the instant case. He has also urged that when the impugned Judgment was passed on 29-11-2002, the petitioner had applied for certified copy of the said Judgment only on 10-12-2002 causing thereby a delay of 11 days; but the said delay has not also been properly explained.

4. For the sake of proper appreciation of the spirited arguments of the learned counsel for the rival parties, it would be apposite and necessary to delve upon the relevant statutory provisions of the Act as well as the Limitation Act.

(a) Section 28 of the Act provides as follows :--

'28. Appeal from decrees and orders -

(1) All decrees made by the Court in any proceeding under this Act shall, subject to the provisions of Sub-section (3) be applicable as decrees of the Court made in the exercise of its original Civil jurisdiction, and every such appeal shall lie to the Court to which appeals ordinarily lie from the decisions of the Court given in the exercise of its original civil jurisdiction.

(2) Orders made by the Court in any proceeding under this Act, under Section 25 or Section 26 shall, subject to the provisions of Sub-section (3), be appealable if they are not interim orders and every such appeal shall lie to the Court to which appeals ordinarily lie from the decisions of the Court given in exercise of its original civil jurisdiction.

(3) There shall be no appeal under this Section on the subject of costs only.

(4) Every appeal under this Section shall be preferred within a period of thirty days from the date of decree or order.'

(b) The following provisions of the Limitation Act may also be noticed.

Section 29 of the Limitation Act envisages as under :--

'29. Savings.-- (1) Nothing in this Act shall affect Section 25 of the Indian Contract Act, 1872. (9 of 1872).

(2) Where any special or local law prescribes for any suit, appeal or application a period of limitation different from the period prescribed by the Schedule, the provisions of Section 3 shall apply as if such period were the period prescribed by the Schedule and for the purpose of determining any period of limitation prescribed for any suit, appeal or application by any special or local law, the provisions contained in Sections 4 to 24 (inclusive) shall apply only insofar as and to the extent to which, they are not expressly excluded by such special or local law.

(3) Save and otherwise provided in any law for the time being in force with respect to marriage and divorce, nothing in this Act shall apply to any suit or other

proceeding under any such law.

(4) Sections 25 and 26 and the definition of 'easement' in Section 2 shall not apply to cases arising in the territories to which the Indian Easement Act, 1882 may for the time being extended.'

(c) The word 'suit' occurs in sub-Clause (3) of Section 29 of the Limitation Act has been defined under Section 2(1) of the Limitation Act which reads -- 'suit' does not include an appeal or an application.

(d) Barring the limitation in preferring any suit, appeal and application after the prescribed period, Section 3(1) of the Limitation Act provides as follows :--

'3. Bar of limitation.-- (1) Subject to the provisions contained in Sections 4 to 24 (inclusive), every suit instituted, appeal preferred, and application made after the prescribed period shall be dismissed although limitation has not been set up as a defence.'

5. From a conjoint reading of the above mentioned provisions of law, it is abundantly clear that although Section 29(3) of the Limitation Act provides that the provisions of the Limitation Act shall not apply to any suit as defined in Section 2(1) of the Limitation Act or other proceeding relating to matrimonial cases. Section 29(2) of the Limitation Act clearly envisages that where any special or local law prescribes a period of limitation for any suit, appeal or application, different from the period prescribed by the Schedule under the Limitation Act, the provisions of Section 3 of the Limitation Act shall apply wherein it is provided that any suit, appeal and application filed after the prescribed period shall be dismissed subject to the provisions contained in Sections 4 to 24 (inclusive) of the said Act, meaning thereby the provisions contained in Sections 4 to 24 (inclusive) of the Limitation Act shall apply to an appeal or an application. Therefore, although, the period of limitation stipulated under the Act, being a special legislation, is different and the same is not prescribed in the Schedule of the Limitation Act, as per provision of Section 3 of the Limitation Act, the provisions contained in Sections 4 to 24 shall apply to an appeal or an application and the applicability of Section 29(3) of the Limitation Act shall continue only to any suit or other proceeding to the

exclusion of appeal relating to marriage and divorce.

6. As regards the submission of delay in applying for the certified copy of the impugned Judgment made on behalf of the respondent, Section 12(2) of the Limitation Act in its clear language provides that the time requisite for obtaining a certified copy of the decree, sentence or order to be assailed, shall be excluded in computing the period of limitation for an appeal; but the said provision does not envisage the requirement of any explanation for causing delay in making an application for certified copy as argued by the learned counsel for the respondent. Accordingly, we are unable to agree with such submission.

7. At this stage, Mr. Bhowmik has submitted that the instant case is fairly and squarely covered by a decision of the Hon'ble Apex Court in Smt. Lata Kamat's case (Smt. Lata Kamat v. Vilas, reported in (1989) 2 SCC 613 : AIR 1989 SC 1477. The Hon'ble Supreme Court in that case, while dealing with applicability of the Limitation Act for filing appeal under the Act, in Paragraph 11 observed as follows :--

'11 * * * *** ***

Sub-section (2) of this section provides that where the limitation provided by the special or local law is different from the period prescribed by the Schedule, the provisions of Section 3 will apply. In the Hindu Marriage Act, the period of appeal is prescribed. In the Schedule under the Limitation Act, there is no provision providing for an appeal under the Hindu Marriage Act. Thus the limitation prescribed under the Hindu Marriage Act is different and is not prescribed in the Schedule. Thus the provisions of Section 3 shall apply and therefore it is clear that to an appeal or application the provisions contained in Sections 4 to 24 shall apply, so far and to the extent to which they are not expressly excluded by the special or local law and Sub-section (3) of this section provides that the provisions of this Act shall not apply to any suit or other proceedings under any marriage law. It is therefore clear that so far as Sub-section (3) is concerned, the impact of it will be that, the provisions of the Limitation Act will not apply so far as a suit or an original proceeding under the Act is concerned but Sub-section (3) will not govern an appeal.'

8. Having meticulously considered the related statutory provisions as referred hereinabove and having regard to the judicial authority of Smt. Lata Kamat's case (supra), we are of the firm opinion that under the Act, the condonation of delay is permissible and accordingly, we are satisfied that in the case at hand, delay of four days has been properly explained which deserves to be condoned. We order accordingly.

9. In the result, this Misc. petition stands
allowed.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com