

Rangamma Vs. Honappa and ors.

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Court : Karnataka

Decided On : Aug-24-1954

Reported in : AIR1955Kant64; AIR1955Mys64

Judge : Venkata Ramaiya, J.

Acts : Limitation Act, 1908 - Sections 5; [Code of Civil Procedure \(CPC\), 1908](#) - Sections 115

Appeal No. : Civil Revn. Petn. Nos. 79 and 80 of 1954

Appellant : Rangamma

Respondent : Honappa and ors.

Advocate for Def. : B.T. Ramaswamy, Adv.

Advocate for Pet/Ap. : H.K. Sreenivasamurthy, Adv.

Judgement :

ORDER

1. The question for decision in these two cases is whether there was sufficient cause for the delay in filing the appeal. Admittedly the appeal rather the application for leave to appeal in forma pauperis was filed beyond the time prescribed and for condonation of the delay an application was filed. The learned District Judge dismissed the application and consequently the appeal. The petitioner seeks

revision of these.

2. The delay is said to be due to the application for copy of the judgment and decree of the trial Court filed in Court about 10 days after the date of judgment not being found in the office. The advocate of the Petitioner and his clerk have filed affidavits in which it is admitted that Petitioner paid the amount to the counsel for obtaining the copies on the date of the judgment itself They are also examined as witnesses. The account (sic) books of the advocate written by the clerk she (sic) the receipt of the money on 14-7-52 and that (sic) application for copies was filed on 24-7-52. According to them sheets were called for later in Aug (sic) and when these were tendered, the application which the production had to be noted was n(sic) found. The register of the court does not contain any entry as regards the filing of the application on 24-7-52. On this ground and from the absence of any complaint by the clerk about the application for the copies being missed in the office the learned Judge has disbelieved the allegation that the application was filed and has held that the petitioner cannot claim indulgence though she was not at fault.

3. It is not suggested that the entry in the Advocate's books about the filing of the application for copies on 24-7-52 is manipulated for the purpose of this case. The advocate says that he signed the application subsequently the clerk took the sheets and reported to him that the application was missing. He says that he has been practising for about 30 years and that the clerk is experienced and honest. It seems to me that the absence of the application is due to mistake somewhere, that the evidence can at best raise a doubt about the filing and cannot be taken to be conclusive against the filing.

4. Even if it is assumed that there was any default on the part of the clerk, I think it was bona fide and the Petitioner, at any rate, should not suffer on this account. 'Karali Charan Sarma v. Apurba Krishna Bajpayi : AIR1931 Cal298 ; 'Ramji Das v. Kumara Kalathi Mudali', AIR 1932 Mad 142 (B), 'Firm Amba Prosad Gopinath v. Firm Jawala Dat Ramkanwar; AIR 1927 Lah 92 (C), are cases in which the delay was condoned on the view that the party should not suffer on account of negligence of counsel or counsel's clerk. Though it is true that the condonation of

delay is a matter of discretion and an order with respect to it is not to be usually interfered with in revision, I think that in the circumstances of this case the view of the lower Court cannot be upheld. The orders of the lower Court dismissing the application for leave to appeal and the application for condoning the delay are set aside. The delay is condoned and the application for leave to appeal is sent back for fresh disposal in accordance with law. Parties will bear their own costs.

5. Application allowed.

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