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In Re: Javvaji Venkateshwarlu

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Court : Andhra Pradesh

Decided On : Oct-30-1973

Reported in : AIR1974AP319

Judge : Venkatarama Sastry, J.

Acts : Limitation Act, 1963 - Sections 12

Appeal No. : S.R. No. 20432 of 1971 (A.S. of 1972)

Appellant : In Re: Javvaji Venkateshwarlu

Advocate for Pet/Ap. : Triambak Rao Deshmukh, Adv.

Judgement :
ORDER

1. I have pursed the decision of Justice H. A. Ayyar in unreported decision in S. R. 46322 of 1963 dated 30-6-1967. It relates to a case where the party had resorted to a combined calculation. Even there the learned Judge says that the period of six days, taken by the office to call for the stamps for decree, should be allowed in favour of the appellant. The learned Judge says that from 1-4-1963 to 16-4-1963, when the copy application was with the office, the time cannot run against the appellant. As this case relates to a combined calculation, I do not think, that this case has any application to the facts of present case.

2. The other cases mentioned in the office note saying that the six days lost, by the carelessness or the negligence of the party, should not be allowed in favour of the party, are not in any way relevant in this case.

3. As per Rule 129 of Civil Rules of Practice which says that every day between the hours of 3 and 5, P. M. a list showing the applications in which the records have been received and the number of stamp papers required, shall be prepared and affixed to the Court's notice Board. Such list shall remain suspended for three days, or, if the last day is a holiday, till the next Court day. If the required stamp papers have not been deposited by 3. P. M. on the fourth day, counting that on which the list was suspended or, if the fourth day is a holiday then a on the next Court day, the application shall be struck off. This rule therefore contemplates that the copy application should be kept with the office until the stamp papers necessary for taking out copies are filed into court, by suspending the list for a period of three days. During that period the copy of application is not returned to the party. Under Rule 128 (A) when the applications are returned for rectification of defects, a limit of seven days shall be fixed for their representation. Therefore this rule also contemplates return of the copy of application for rectification within seven days.

4. In the case of calling for stamp papers or calling for printing charges, I do not think that the time stipulated in the notice board for calling for stamp papers or printing charges, can be said to be the time lost by the party on account of his time requisite for the court to make the copies ready. It must be treated to be in the same manner as the time taken by the office for calling for or ascertaining the necessary stamp papers of printing charges to be paid by the party.

4 -A. As is indicated in Rule 127 of Civil Rules of Practice, where the copy applications are not accompanied by requisite number of stamp papers or requisite amount printing charges, the Civil Rules of Practice contemplate only calling for such stamp papers or printing charges within a particular period fixed by the Court. If the stamps are filed or charges are paid within that time fixed, the party must be deemed to have complied with that direction of the Court. If the party complies with that direction on the last date of the period (granted) by the

Court, he is deemed to have complied with the Court direction on the first day of the direction, and the time taken for compliance by the party shall be time taken by the Court as time requisite for supplying copies.

5. For analogy we may refer to Section 1498, C. P. C., where the whole or any part of any fee prescribed for any document by the law for the time being in force relating to Court-fees has not been paid, the Court may , in its discretion , at any stage, allow the person, by whom such fee is payable, to pay the whole or part, as the case may be of such Court-fee and upon such payment the document, in respect of which such fee is payable shall have the same force and effect as if such fee had been paid in the first instance.

6. Applying this analogy to Rule 129 of Civil Rules of Practice , whenever Court calls for stamps it must be held that when the party complies with that requisition within the time stipulated in that notice, he must be deemed to have complied with that direction on the first day. It must therefore be treated as time requisite for preparing the certified copies.

7. I may in this connection rely upon a decision of the Privy Council in Jijibhoy N. Surty v. T.S. Chettyar , AIR 1928 PC 103. Their Lordships have held in that case as follows :

'The word 'requisite' is a strong word; it may be regarded as meaning something more than the word 'required'. It means, properly required , and it throws upon the pleader or counsel for the appellant the necessity of showing that no part of the delay beyond the prescribed period is due to his default. But for that time which is taken up by his opponent in drawing up the decree or by the official of the Court in preparing and issuing the two documents, he is not responsible.'

8. In view of this decision the time taken by the Court in preparing and issuing the copy of the Judgment and decree is not time for which the party should be held responsible. It should be deemed to be the time properly required by the Court in getting the copy stamps from the party in order to enable it to prepare the certified copy. As stated by me already, the copy application is kept on the file and is not returned. It will be struck off only if within the time fixed in the notice the copy

stamps have not been deposited or the printing charges have not been paid. Until then the copy application is validly on the file of the Court and there is no carelessness or negligence on the part of the litigant, in prosecuting the same. The mere fact that he has filed the stamp papers on the third day or the last day will not make the time taken by him from the date of the intimation suspending in the notice board for the deposit of copy stamps or printing charges, as the time spent by him due to carelessness or negligence.

9. When the Court requires a party to do a particular act by a particular time the party will be within his right in doing it within the time and he cannot be penalised for what he has done according to the directions of the Court. In this view I am of the opinion that the time taken for filing of the copy stamps or payment of printing charges as per the directions of the Court, cannot be counted against the party but it must be deemed to be the part of the time requisite by the Court to furnish certified copies.

10. In this view I am of the opinion that the order dated 1-8-1972 is correct and it does not need any alteration.

11. Order accordingly.

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