

Baldeo Pershad Vs. Dwarika Pd.

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Court : Allahabad

Decided On : Jan-06-1957

Reported in : AIR1957All334

Judge : Mootham, C.J., ;Mukerjee and ;Srivastava, JJ.

Acts : Limitation Act, 1908 - Sections 12, 12(2) and 12(3) - Schedule - Articles 170 and 179

Appeal No. : Supreme Court Appeal No. 78 of 1956

Appellant : Baldeo Pershad

Respondent : Dwarika Pd.

Advocate for Def. : P. Bhargava and ;N.D. Ojha, Advs.

Advocate for Pet/Ap. : Ambika Prasad and ;Raja Ram Agarwala, Advs.

Judgement :

Mootham, C.J.

1. The question referred to this Bench is

'Whether in computing the period of limitation prescribed for an application for leave to appeal to the Supreme Court the applicant is entitled to exclude the time taken in obtaining a copy of the judgment appealed from.'

The reference has been made because of a difference of opinion between the former Allahabad High Court and the Oudh Chief Court.

2. The relevant provisions of the Indian Limitation Act are Sub-sections (2) and (3) of Section 12 which read as follows :

'(2) In computing the period of limitation prescribed for an appeal, an application for leave, to appeal and an application for a review of judgment the day on which the judgment complained of was pronounced and the time requisite for obtaining the copy of the decree, sentence or order appealed from or sought to be reviewed shall be excluded.

(3) Where a decree is appealed from or sought to be reviewed, the time requisite for obtaining a copy of the judgment on which it is founded shall also be excluded.'

There has been a divergence of opinion among the High Courts as to whether the provisions of Sub-section (3) apply in the case of an application for leave to appeal, and , the true interpretation of these provisions presents some difficulty.

3. One view is that whereas Sub-section (2) refers to three categories of cases, an appeal, an application for leave to appeal and an application for a review of judgment, the second of these categories has been deliberately omitted from Sub-section (3) the provisions of which in consequence do not apply to applications for leave to appeal. This is the view taken by the former Allahabad High Court in *Gulab Chand v. Peary Lal* : AIR1935 All99 , approving the earlier decision to the same effect of *WJlayati Begam v. Firm Jhandu Mal Mithu Lal* : AIR1926 All286 , and which has been adopted by the Bombay and East Punjab High Courts in *Dharwar Bank Ltd. v. V.M. Deshpande* : AIR1954 Bom525 , and *Ghulam Haider v. Abdul Ghani*, AIR 1950 Lah 76 (D). A second view is that the words 'decree appealed from' in Sub-section (3) include a decree sought to be appealed from, and that therefore the provisions of this sub-section apply to applications for leave to appeal.

Such is the view taken in *re, Secretary of State*, AIR 1925 Mad 1241 (E), and it is the basis of the decision of the Oudh Chief Court in *Hunter v. Ehsan Husain*,

AIR 1941 Oudh 247 (P). A third view, exemplified by *Raj Kishore Das v. Ram Ghulam Sahu*, AIR 1922 Pat 256 (G), and *R. K. Banerjee v. Alagammai Achi*, AIR 1936 Rang 82 (H), is that the provisions of Sub-section (3) apply generally to cases covered by Sub-section (2) on the broad ground that it is necessary that the party who contemplated making an application for leave to appeal should be able to obtain a copy of the judgment complained of in order that he may see exactly what are its terms. The Calcutta High Court in *Commissioner of Income Tax, Bengal v. Shaw Wallace & Co.* : AIR1932 Cal587 , and *Dwarka Das Kedar Bux v. Gajanan Jaganath*, AIR 1946 Cal 10 (J), has also held that Sub-section (3) applies to application for leave to appeal, but the question was not discussed and no reasons were given for the view taken.

4. Learned counsel for the respondent has contended that the view taken in : AIR1935 All99 is correct. He has also made two further submissions. The first is that an application for leave to appeal does not include an application for a certificate under Articles 132 and 133 of the Constitution. We think however that this point is without substance, the matter being put beyond doubt, so far as the Limitation Act is concerned, by Article 179 of the First Schedule thereto which prescribes the period of limitation 'by a person desiring to appeal.....to the Supreme Court for leave to appeal. Alternatively, learned counsel concedes that the words 'decree appealed from' must bear the same meaning in Sub-section (3) as in Sub-section (2), but he contends that as an application for leave to appeal is not in itself an appeal there is no decree which is appealed from; and that consequently in computing the period of limitation for such an application the applicant can exclude neither the time requisite for obtaining a copy of the judgment complained of nor of the decree.

5. In our opinion the answer to the question which has been referred turns on the meaning which must be given to the words 'decree appealed from' in Sub-sections (2) and (3), and we think that these words must bear the same meaning in Sub-section (3) as they do in Sub-section (2). Prima facie the words 'decree appealed from' would not apply in the case of an application for leave to appeal, for such an application is a step anterior to an appeal proper; but there are considerations which have led us to the conclusion that these words are intended to cover the

case of such an application.

6. Sub-section (2) refers to three classes or categories of cases; an appeal, an application for leave to appeal and an application for review of judgment, and it provides that not only shall the day on which the judgment complained of was pronounced be excluded in computing the period of limitation but that, inter alia, the time requisite for obtaining a copy of the decree appealed from shall also be excluded. Now Sub-section (3) provides that the time requisite for obtaining a copy of the Judgment complained of shall also be excluded where, inter alia, a decree is appealed from, and prima facie there is no reason why the words 'decree appealed from' should have a more restricted meaning in Sub-section (3) than they have in Sub-section (2).

The question then is whether these words, 'decree appealed from', should be held to include a decree against which a person seeks leave to appeal; and in our opinion they do. So far as we are aware (and no case has been brought to our attention in which a contrary view has been taken) Sub-section (2) has consistently been held to entitle an applicant for leave to appeal to exclude the time requisite in obtaining a copy of the decree complained of (see *Ram Sarup v. Jaswant Rai*, ILR 38 All 82: (AIR 1915 All 335 (2)) (K), and the Patna and Madras cases already cited) and this we think to be the plain meaning of the sub-section.

Any doubt that the words 'decree appealed from' include a decree against which a person seeks leave to appeal is we think resolved by a reference to Articles 179 and 170 of the First Schedule to the Act. These Articles prescribe the period of limitation within which applications for leave to appeal to the Supreme Court and applications for leave to appeal as a pauper respectively must be made, and in each case time begins to run from the date of the 'decree appealed from'. It follows therefore that, in computing the period of limitation for an application for leave to appeal the time requisite for obtaining a copy of the judgment complained of must also be excluded.

7. Sir Shah Mohammad Sulaiman, C. J. who delivered the judgment of the Court in : AIR1935 All99 took a different view, and he did so on two grounds. In the first place he was of opinion that a comparison of Sub-section (2) with Sub-section (3)

showed a clear intention on the part of the legislature to exclude applications for leave to appeal from the ambit of the latter sub-section. The two sub-sections are not however framed in the same manner and cannot, we think, be contrasted in the way suggested by the learned Chief Justice. Sub-section (2) provides that the time requisite for obtaining a copy of the decree, sentence or order appealed from shall be excluded in computing the period of limitation in three specified classes of proceedings.

Sub-section (3) makes provision for the exclusion in certain cases of the time requisite for obtaining a copy of the judgment complained of ; but it does not do so by direct reference to any of the three classes of proceedings mentioned in the preceding sub-section; it does by reference to the decree appealed from or sought to be reviewed, and it is clear that the court was not invited to consider the argument that the words 'appealed from' in Sub-section (3) referred to the decree which was the basis both of (1) an appeal and (2) an application for leave to appeal.

8. The second ground was an inference drawn from the course of legislation. The second and third paragraphs of Section 12 of the Indian Limitation Act of 1877 were, with one important difference, in the same terms as Sub-sections (2) and (3) of Section 12 of the present Act, the difference being that in lieu of 'an application for leave to appeal' there appeared the words 'an application for leave to appeal as a pauper.' An applicant for leave to appeal to the Privy Council was consequently not entitled, in computing the period of limitation, to exclude the time taken in obtaining a copy either of the decree or the judgment complained of *Shib Singh v. Gandharp Singh*, ILR 28 All 391 (L); *Anderson v. Periasami*, ILR 15 Mad 169 (M). The learned Chief Justice regarded the fact that although the 1908 Act omitted the words 'as a pauper' in Sub-section (2) of Section 12 it made no change in Sub-section (3) as indicating an intention on the part of the legislature that the applicant for leave to appeal should be entitled to exclude only the time requisite in obtaining a copy of the decree appealed from. With respect we do not think this to be so.

9. In the 1877 Act the words the 'decree appealed from' in the third paragraph of Section 12 must *prima facie* have the same meaning as they have in the second

paragraph. An applicant for leave to appeal to the Privy Council would not therefore, be entitled to deduct, under the third paragraph, the time taken in obtaining a copy of the judgment complained of; but an applicant for leave to appeal as a pauper would be entitled to a copy, and this was so held in *Mst. Moti Begam v. Mst. Satara Begam*, 33 Pun Re 1895 (N). The effect of the emission of the words 'as a pauper' in the corresponding provision in the 1908 Act was to alter the meaning of the words 'decree appealed from' in Sub-section (2) as well as Sub-section (3), and whereas formerly an applicant for leave to appeal (except as a pauper) was entitled to deduct neither the time requisite for obtaining a copy of the decree appealed from nor a copy of the judgment complained of, he now became entitled to deduct both.

10. In our opinion : AIR1935 All99 was not rightly decided and must be overruled. We answer the question referred to us in the affirmative.

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