

Ram Charan Vs. Bansidhar and ors.

Ram Charan Vs. Bansidhar and ors.

SooperKanoon Citation : sooperkanoon.com/457477

Court : Allahabad

Decided On : Jul-03-1928

Reported in : AIR1928All499

Appellant : Ram Charan

Respondent : Bansidhar and ors.

Judgement :

1. This is an application on behalf of one Ram Charan, who filed an appeal, on payment of a Court-fee of Rs. 2 purporting to be against an 'order' passed in execution of a decree. His appeal was really one arising out of an application for restitution, and the office of the High Court reported that the appeal was against a decree and that the Court-fee payable was an ad valorem fee. The applicant took time to pay the deficiency in Court-fee, but, ultimately, made this application on 14th May 1928, praying that he might be permitted to appeal as a pauper. There is an oral application on behalf of his counsel that, if necessary, time might be extended for making such an application under Section 5, Lim. Act.

2. The application has been opposed by the learned Counsel for the opposite party on the ground that the application having been made more than 30 days after the passing of the decree appealed against, should be treated as time barred. There can be no doubt that the applicant filed the appeal as an appeal against an order in the execution department, and never purported to make an application for leave to appeal as a pauper. It happened, contrary to the

expectations of the applicant, that this Court treated the appeal as from a decree. It is possible that if the applicant had been advised beforehand that he could not appeal on a two-rupees stamp, he would have come in at once and within the 30 days allowed by Art 170, Lim. Act.

3. The question that we have to consider is whether Section 5, Lim. Act, is at all applicable and, secondly, whether we should apply the 'same if we find that it is applicable.

4. The earlier Limitation Act of 1877 has undergone an alteration in the later Act of 1908. The words 'for leave to appeal' have been added to Section 5. The words in our opinion are wide enough to include an application for leave to appeal as a pauper under Order 44, Rule 1, Civil P.C. The case of Gati v. Rachla Kunwar [1915] 13 A.L.J. 635 has been brought to our notice. In it two learned Judges of this Court held that the application before them, made under circumstances similar to those of this case, was time barred. Their Lordships attention was, however, not drawn to Section 5, Lim. Act, 1908. Further, it does not appear that there was any application before their Lordships for an extension of time. In the circumstances we do not consider that this case is a sure guide for us.

5. Coming to the second point, namely, whether we should extend the period of limitation, we have considered the matter from two points of view, namely, whether, having regard to the proviso to Rule 1, Order 44, we should permit the applicant to appeal as a pauper, and whether the fact that his application has been made so late should deter us from granting his application. We are satisfied that the question raised here is a question of law, and that the application is a bona fide one, and therefore permission to appeal as a pauper should be granted, and time should be extended.

6. The question whether, as a matter of fact, the applicant is a pauper or not has to be gone into. We direct that an enquiry into the pauperism or otherwise of the applicant be made by the Court below. We grant three months' time for the purpose.

