

Mool Chand Vs. Smt. Vishala Devi

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Court : Allahabad

Decided On : Nov-07-1966

Reported in : AIR1967All524

Judge : Mahesh Chandra, J.

Acts : [Limitation Act, 1963](#) - Sections 12(2)

Appeal No. : Second Appeal No. 268 of 1964

Appellant : Mool Chand

Respondent : Smt. Vishala Devi

Advocate for Def. : Kailash Nath, Adv.

Advocate for Pet/Ap. : Harish Chandra, Adv.

Disposition : Appeal allowed

Judgement :

Mahesh Chandra, J.

1. The only point for consideration in this appeal is whether the appeal filed before the lower appellate court was time-barred.

2. The contention of the learned counsel for the appellant is that the Court below erroneously believed that an application for condonation of delay under Section 5 of the Limitation Act was necessary and dismissed the appeal as time barred because it had received the application for condonation of delay. The learned counsel for the appellant urges that there was no necessity at all for an application for condonation of delay and that the appeal filed was within time after excluding the periods taken for obtaining a copy of the judgment and a copy of decree.

3. The judgment of the trial Court is dated 4-12-1963. The appellant applied for a copy of the judgment on 10-12-1963 and the copy was ready on 2-1-1964. He was entitled to an exclusion of 24 days in computation of the period of limitation. He could, therefore, file an appeal on 27/1/1964. Three days before that i.e. on 24-1-1964, he applied for a copy of the decree and obtained it on 25-1-1964. Thus, he could file the appeal on 29/1/1964 the appeal was actually filed on 28-1-1964

4. Sub-section (2) of Section 12 of the Limitation Act runs as follows:--

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

5. It is evident that the section does not provide that only one of the two, that is, either the time for obtaining a copy of the decree or the time taken in obtaining a copy of judgment would be excluded and that both the periods cannot be excluded. Nor does it provide that the time for obtaining a copy of the decree shall not be excluded if the application for a copy of the decree had been made during the extended period of limitation after an application for the copy of the judgment had already been made. The Limitation Act restricts the right of an appellant to file his appeal. Extension of the period of limitation cannot, therefore, be limited unless it is so limited on a strict interpretation of the provisions of the Act. Where there is no specific provision restricting the right of the appellant, the section is not to be so interpreted as to deprive him of a right to file an appeal if the language of Section 12 gives him the benefit of filing the appeal within the extended period.

6. In *Om Prakash v. Sm. Sohan Devi* : AIR1956 All486 a Division Bench of this Court held that the appellants should get the benefit of Section 12, as the second application for a copy of the judgment was made before the extended period had expired. In that case the suit was decided on 8-5-1954 and the application for copy of the decree was made on 2/6/1954 which was ready for delivery on 24-7-1954. Another application for a copy of the judgment was made on 31-8-1964, that is during the extended period of limitation, and it was ready on 11-9-1954. The period for filing the appeal was 90 days. As the application for a copy of the judgment had been made during the extended period of limitation the appellant was allowed to exclude the time taken for the preparation of the copy of the judgment, and the memorandum of appeal was held to have been instituted within limitation. With respect I agree with the views of Randhir Singh, J., who spoke for the Court in that case.

7. In an earlier decision of a Full Bench of the Bombay High Court reported in *Murlidhar Shrinivas v. Motilal Ramcoomar* AIR 1937 Bom. 162 the Full Bench went even further and held that in computing the time for appealing from a decree, it is legitimate in a proper case to exclude the period requisite for obtaining a copy of the decree even when no application for such copy was made till after the expiration of the time for appeal. They have further held that the question whether the time was requisite was always one of fact to be decided in the circumstances of each case. It is not necessary to go to that length in the present case, when the application for a copy of the decree was made during the extended period of limitation.

8. In *Badshah Miyan v. Pandurang* AIR 1930 Nag 113 it was held by the Full Bench that-

'Where a party applies for a copy of the judgment alone and sometimes later applies for a copy of the decree the time required for obtaining the copy of the judgment plus the time requisite for obtaining a copy of the decree should be excluded, provided that days on which both copies were being prepared cannot be doubly excluded, from the computation of the period of limitation.'

There is no doubt that the time which over-laps cannot be excluded twice in the computation of the period of limitation

9. In *Lallu Ram v. Deputy Commr., Kheri, Manager, Court of Wards, Mahewa Estate . Shrivastava. C. J. and Smith. J.*, held that-

'Where applications for copies of the judgment and decree are made at different times the appellant is entitled to the time occupied in obtaining the copies of both the judgment and the decree. '

In that case also the 30 days' time allowed for the appeal expired on 9-3-1934 and the period of limitation was extended by 8 days because of the time taken in obtaining the copy of the judgment. The appeal could, therefore, be filed on or before 17-3-1934. The application for, a copy of the decree was made within that period and the Court held that the time taken in obtaining the copy of the decree can also be excluded. It was, therefore, the view of the erstwhile Chief Court of Oudh also that if the application for the copy of a decree is made during the extended period of limitation, the time taken in obtaining the copy of the decree can be excluded in computing the period of limitation. As we have already seen, the same view was taken in *Om Prakash : AIR1956 All435 (supra)*.

10. The learned counsel for the respondent relies on two Full Bench decisions of the Allahabad High Court reported in *Bechi v. Ahsan Ullah Khan*, (1890) ILR 12 All. 461 (FB) and *Keshar Sugar Works v. R.C. Sharma : AIR1951 All122* . He also relied on *Jagat Dhish Bhargava v. Jawahar Lal Bhargava : [1961]2SCR918* . None of these decisions however, apply to the present case. All that was decided in these cases was that the time taken by the office or the Court in drawing up a decree cannot be excluded if no application for a copy has been made before the decree has been drawn up, and that only the time taken by the office or the Court in drawing up a decree after a litigant has applied for its certified copy on judgment being pronounced would be treated as a part of the time taken for obtaining the certified copy of the decree.

These decisions proceed on the principle that it is only after the application for a copy has been made that the time taken in the preparation of the copy can be

excluded and the litigant has no right to add to it the time taken in the drawing up of the decree if he had made no application for a copy before the decree was drawn. These decisions did not consider the question whether the appellant was entitled to exclude from computation the time taken in the preparation of the copy when he had made an application for a copy of the decree during the extended period of limitation and no question of the time taken for the drawing up of the decree involved. The respondent cannot, therefore, derive any help from these decisions.

11. The appeal filed in the Court below was clearly within limitation. The second appeal is allowed and the judgment and decree of the appellate court are accordingly set aside and the case is sent back to it for decision of the appeal before it on merits. Costs shall abide the result of the case.

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