

Sumitra Devi and ors. Vs. Harnam Dass

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Court : Delhi

Decided On : Mar-09-1981

Reported in : 21(1982)DLT6b; 1981(2)DRJ107

Judge : Sultan Singh, J.

Acts : [Limitation Act, 1963](#) - Sections 5

Appeal No. : Civil Miscellaneous Appeal No. 157 of 1981 and Second Appeal No. 487 of 1980

Appellant : Sumitra Devi and ors.

Respondent : Harnam Dass

Advocate for Pet/Ap. : K.L. Arya and; K.N. Topa, Advs

Judgement :

Sultan Singh, J.

(1) The short question is: whether appeal is barred by time. This is an appeal under Section 39 of the Delhi Rent Control Act, 1958 (hereinafter called 'the Act'). A period of 60 days from the date of the order of the Tribunal is prescribed for filing an appeal in this Court. The impugned judgment and order was passed by the Tribunal on 11th August, 1980. An application was made on 6th October, 1980 for obtaining the copy of the impugned judgment and order. The Copying Department

registered the application at Seriall No. 6118 and issued a slip mentioning 14th October, 1980 on which date the applicant was supposed to visit the Copying Department and collect the certified copy. The appellant, it appears, did not visit the Copying Department on 14th October, 1980 as directed but went there on 15th October 198 and collectted the certified copy of the impugned judgment and order. The appeal was filed in this court on 16th October, 1980. On a perusal of the endorsement on the certified copy of the judgment and order, the appellant found that the certified copy was ready with the Copying Department on 9th October, 1980. Learned counsel for the appellant submits that the application for obtaining the copy was made on 6th October, 1980 and the appellant was directed to collect the same on 14th October, 1980. In these circumstances, he submits that the time from 6th October, 1980 to 14th October, 1980 should be taken as the time requisite for obtaining copies of the judgment and order within the meaning of Section 12 of the Limitation Act. Section 12 of the Limitation Act reads as under :

'SECTION 12(1): In computing the period of limitation for any suit, appeal or application, the day from which such period is to be reckoned, shall be excluded. (2) In computing the period of limitation for an appeal or an application for leave to appeal or for revision or for review of a 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 revised or reviewed shall be excluded. (3) Where a decree or order is appealed from or sought to be revised or reviewed, or where an application is made for leave .to appeal from a decree or order, the time requisite for obtaining a copy of the judgment on which the decree or order is founded shall also be excluded. (4) In computing the period of limitation for an application to set aside an award, the time requisite for obtaining a copy of the award shall be excluded. Explanationn :-In computing under this section the time requisite for obtaining a copy of a decree or an order, any time taken by the court to prepare the decree or order before an application for a copy thereof is made shall not be excluded'.

(2) The day from which period of limitation is to be counted is excluded under subsection (1). The day on which the impugned judgment is pronounced and the time requisite for obtaining a copy of the decree or order appealed from is also to be

excluded under sub-section (2). Under sub-section (3) time requisite for obtaining a copy of the judgment on which the decree or order is founded is also to be excluded. Thus it seems that the appellant is entitled to exclude the time requisite for obtaining the copies of the judgment and decree or order. The words 'time requisite' used in this section have not been defined. The question is : what is the time requisite for obtaining copies in a particular case. It appears to be one of fact and must be determined with reference to the facts and circumstances of that case and in the light of the rules, if any. and also of the practice of the court. When there has been no mistake, in action or want of bona fides on the part of the applicant or his counsel and there is a delay in giving copies due to the negligence or rules of the Copying Department, the period spent by an applicant in obtaining the certified copy should be regarded as 'time requisite'. In the present case the appellant made the application on 6th October, 1980 and he was asked to collect the same on 14th October, 1980. But in fact the Copying Department had prepared and completed the certified copy on 9th October, 1980 as is apparent from the endorsement contained on the certified copy. Ordinarily the period from 6th October, 1980, when the application was made, to 9th October, 1980, when the copy was ready is the 'time requisite' for obtaining the certified copy. But when for no fault of the applicant, the Copying Department asked him to visit on 14th October, 1980 for collection of the copy, it seems that the period from 10-10-1980 to 14-10-1980 must also be taken as the time requisite for obtaining the copy of the impugned judgment and order. The appellant has not been negligent. He is entitled to clear 60 days to make up his mind whether he would like to file an appeal or not. If any time is spent in obtaining the copies on account of any action or inaction of the Copying Department, the applicant cannot be blamed. Thus it seems to me that in the present case when the application was made on 6th October, 1980 and the Copying Department directed the appellant to visit the agency for collection of the copy on 14th October, 1980, the appellant is entitled to exclude the entire period from 6th October, 1980 to 14th October, 1980 as the 'time requisite' for obtaining the certified copy. If this period is excluded the appeal is within time.

(3) Learned counsel for the respondent submits that the appellant has not been pursuing the matter diligently, that the application for obtaining the certified copy

was made on 6th October, 1980 while the impugned order was passed on 11th August, 1980. The objection has no merit. The party is entitled to apply for the certified copy as and when he likes after passing of the judgment and decree or order. In any case, he has to make an application for obtaining certified copies before the expiry of the period of limitation fixed for filing an appeal. In the present case the application for obtaining the copy was filed before the expiry of the period of limitation. The applicant is entitled to exclude the time requisite in obtaining the certified copy. After obtaining the certified copy the applicant is entitled to consider and take a decision to file an appeal. Thus, I find that there is no negligence or want of inaction or want of bona fides on the part of the appellant. Thus I am of the view that the appellant is entitled to exclude the time from 6th October, 1980 to 14th October, 1980 during which period the application for obtaining the copy was pending with the Copying Department. The copy was collected on 15th October, 1980 but the appellant is not entitled to exclude another day i.e. 15th October, 1980 when he collected the copy. Thus I hold that the present appeal is within time. There will be no order as to costs.