

Vishwanath Vs. Dhanraj

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Court : Rajasthan

Decided On : Nov-05-1981

Reported in : AIR1982Raj66

Judge : S.K. Mal Lodha, J.

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

Appeal No. : Civil Second Appeal No. 239 of 1971

Appellant : Vishwanath

Respondent : Dhanraj

Advocate for Def. : M.R. Bhansali, Adv.

Advocate for Pet/Ap. : N.P. Gupta, Adv. for D.S. Shishodia, Adv.

Disposition : Appeal allowed

Judgement :

S.K. Mal Lodha, J.

1. This is a defendant's appeal under Section 100, C. P. C. against the judgment and decree dated August 13, 1970 of the Senior Civil Judge, Bhilwara. The Munsif, Gangapur by his judgment dated Sep. 12, 1969 decreed the plaintiff's suit for Rs. 1520/- consisting of Rs. 1290/- as principal and Rs. 230/- as interest with costs against the defendant-appellant. The defendant-appellant preferred an appeal on October 22, 1969. The learned Senior Civil Judge, by the impugned order dated August 13, 1970, dismissed the appeal holding it to be barred by time. Hence, defendant-appellant has preferred this second appeal.

2. I have heard Mr. N.P. Gupta, learned counsel for the appellant and Mr. M. R. Bhansali for the respondent.

3. The only question that arises for determination is whether the learned Senior Civil Judge was right in dismissing the appeal as barred by time.

4. The learned Munsif, Gangapur gave judgment on Sept. 12, 1969. The defendant applied for obtaining the certified copies of the judgment and decree on Oct. 10, 1969. The date fixed for the issuance of the copies was Oct. 17, 1969. The copies were ready on October 17, 1969. It appears from the endorsement made on the copies that the copies were delivered on October 21, 1969. The appeal was filed on October 22, 1969. The learned Senior Civil Judge has held that it is barred by one day. The defendant had filed an application under Section 5 of the [Limitation Act, 1963](#) (for short 'the Act' herein) supported by his affidavit for condoning one day's delay. The reasons given by the defendant in the application for condoning the delay were not accepted by the learned Senior Civil Judge and he was of the opinion that the delay of one day in presenting the appeal cannot be condoned. In view of the conclusion to which I have arrived at, it is not necessary to examine the

reasons given by the learned Senior Civil Judge for holding that the appeal was barred by one day and that the delay cannot be condoned. The copy was ready on October 17, 1969. Under Section 12(2), the appellant is entitled to the exclusion of the day when the judgment was pronounced, as well as the time requisite for obtaining one copy of the decree appealed against. The appeal was filed within 40 days. The period from Oct. 10, 1969, (the date when the application for obtaining the certified copies of the judgment and decree was made) to Oct. 17, 1969, (the date on which the copies were ready) is 8 days. Oct. 18, 1969 to Oct. 20, 1969 were holidays. This has also been stated by the defendant-appellant in the application dated Jan. 8, 1970, which was supported by his affidavit. The copies were taken delivery of on Oct. 21, 1969, as is clear from the endorsement made on the the copies themselves. The question is whether when the copies were ready on Oct. 17, 1969, three days from Oct. 18, 1969 to Oct. 20, 1969 which were holidays are to be included in the time requisite for obtaining the copies within Section 12(2) of the Act, If the period from Oct. 18, 1969 to Oct. 20, 1969 (both days inclusive) is included in the period, time requisite for obtaining the certified copies along with the period from Oct. 10, 1969 to Oct. 17, 1969, the appeal, which was filed on Oct. 22, 1969 is within time. In my opinion, when the copies were ready on Oct. 17, 1969, the succeeding days from Oct. 18, 1969 to Oct. 20, 1969 which were holidays should also be included in the time requisite for obtaining the certified copy of the decree appealed against. In other words in computing the period of limitation besides the day on which the judgment complained of was pronounced, period from Oct. 10, 1969 to Oct. 20, 1969 which is time requisite for obtaining copies should be excluded. If the day or days succeeding the day on which the copies were ready for delivery are holidays, such a day or days are to be excluded for computing the period of limitation, if the delivery is taken on the next day. Reference in this connection may be made to Ramaswamy Chetty v. Ramanatha Chetty ((1913) 21 Ind Cas 192). This is subject to exception where special arrangement is made to deliver copies during holidays under any rule or special order or direction. If the period from October 18, 1969 to Oct. 20, 1969 is included in the period 'time requisite' for obtaining the certified copies of the judgment and decree within the meaning of Section 12(2) of the Act the appeal which was filed on Oct. 22, 1969 was within limitation inasmuch as it was filed within 40 days though the defendant was entitled to 41 days. In this view of the matter, the conclusion of the learned Senior Civil Judge that the appeal was barred by one day is erroneous and cannot be sustained. The appeal which was filed on Oct. 22, 1969 was not barred by limitation. I reverse the order dated Aug. 13, 1970, of the Senior Civil Judge, Bhilwara.

5. The result is that I allow this appeal, set aside the judgment and decree dt. Aug. 13, '70 of the Senior Civil Judge, Bhilwara and remand the appeal for disposal in accordance with law to the District Judge, Bhilwara. The costs of this appeal will abide the final result of the suit.

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