

Nanusam Vs. Sitaram

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Court : Rajasthan

Decided On : Feb-16-1971

Reported in : AIR1972Raj36; 1971(4)WLN314

Judge : Jagat Narayan, C.J. and; J.P. Jain, J.

Acts : Limitation Act, 1908 - Sections 12

Appeal No. : Second Appeal No. 268 of 1963

Appellant : Nanusam

Respondent : Sitaram

Advocate for Pet/Ap. : R.M. Bishnoi, Adv.

Disposition : Appeal dismissed

Judgement :

Jagat Narayan, C.J.

1. This second appeal by the defendant has been referred to a Division Bench by a learned single Judge of this Court on account of certain observations made by Bhandari, J. in Guman v. Laxman, (1961) ILR 11 Raj 913 and some conflict of judicial opinion on the point.

2. The facts relevant for disposal of the case are these. A suit brought by the plaintiff against the defendant for recovery of money was decreed by Munsif Bikaner on 30th May 1962. The court remained open upto 3rd June, 1962 and closed for the vacation from 4th June, 1962 to 1st July, 1962. It reopened on 2nd July, 1962. The defendant filed an application for copy of the judgment and decree on 2nd July, 1962. He presented an appeal unaccompanied by copies of the judgment and decree on 3-7-1962. On 19-7-1962 copies of the judgment and the decree were delivered to him which he presented in the appeal. The appeal was thus taken to have been properly presented on 19-7-1962. It was dismissed as time-barred by the learned Civil Judge. Against this dismissal the present second appeal has been filed,

3. It is contended on behalf of the appellant that the period of the vacation from 4-6-1962 to 1-7-1962 should be included in the period requisite for obtaining a copy of the decree.

4. It was held by a Division Bench of this Court in Behari Dass v. Jagdish, ILR 2 Raj 121 = (AIR 1953 Raj 7) that the time requisite for obtaining a copy of the decree cannot refer to any period antecedent to the appellant's filing an application for copy and hence he is not entitled to the exclusion of any time that may have been taken in preparation of the decree prior to his making an application for the copy. The attention of the learned Single Judge was not drawn to this Division Bench authority- Bhandari J. referred to this very case in (1961) ILR 11 Raj 913 and on the basis of it gave the decision. He held that under Section 12(2) of the Limitation Act, 'time requisite for obtaining a copy cannot refer to any period antecedent to the appellant's filing an application for copy. In that case judgment was pronounced on the last working day before the vacation, namely 31-5-1952 and it was in this context that the observations made by him are to be read. They are not applicable to the present case where four working days intervened between the delivery of the judgment and the closing of the Court for vacation.

5. Recently a similar case was considered by a Full Bench of the Allahabad High Court in Bhagwan Swarup v. Municipal Board, Ujhani, AIR 1970 All 652 (FB). The relevant sections of the Indian Limitation Act are Sections 4 and 12. They are

reproduced below:--

4. 'Where the prescribed period for any suit, appeal or application expires on a day when the Court is closed, the suit, appeal or application may be instituted, preferred or made on the day when the Court re-opens.

Explanation:--A Court shall be deemed to be closed on any day within the meaning of this section if during any part of its normal working hours it remains closed on that day.'

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.

Explanation:-- 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.'

6. In *Maqbul Ahmad v. Onkar Pratap*, AIR 1935 PC 85 their Lordships of the Privy Council said this:--

'The second period is the period of the long vacation. In regard to that matter, the appellants seem to their Lordships to be in a position which is in the nature of a dilemma. It is to be noted that there is a marked distinction in form between

Section 4 and Section 14. The language employed in Section 4 indicates that it has nothing to do with computing the prescribed period. What the section provides is that, where the period prescribed expires on a day when the Court is closed, notwithstanding that fact, the application may be made on day that the Court reopens; so that there is nothing. In the section which alters the length of the prescribed period; whereas in Section 14 and other sections of a similar nature in the Act, the direction being with the words: 'In computing the period of limitation prescribed for any application,' certain periods shall be excluded. It, therefore, seems to their Lordships that, where there is ground for excluding certain periods under Section 14, in order to ascertain what is the date of the expiration of the prescribed period, the days excluded from operation by way of limitation have to be added to what is primarily the prescribed period, that is to say, if the prescribed period is three years, and twenty days ought to be excluded in order to determine when the prescribed period expires, twenty days have to be added to the three years, and the date of the expiration of the prescribed period is thus ascertained.'

7. The only period which can be excluded in this case is the period from 2nd July, 1962 when the application for copies of the judgment and decree were made upto 19th July, 1962 when these copies were delivered. The vacation from 4-6-1962 to 1-7-1962 cannot be treated as period requisite for obtaining copies within the meaning of Section 12(2). Nor can this period be excluded under any other provision of law. The period of limitation should be computed first and, if Section 12 or other similar sections permit the exclusion of any period, that period should be added to the prescribed period of limitation and if the total period thus arrived at, expires on a day when the Court is closed, Section 4 of the Act would come into play.

8. Computing limitation in this case in this manner, the judgment was delivered on 30-5-1962. Thirty days is the period prescribed for filing an appeal. To that period is to be added a period of eighteen days which was requisite for obtaining copies of the judgment and the decree. The limitation for filing an appeal thus expired on 17th July, 1962. The appeal which was presented on 19th July, 1962 was thus barred by limitation.

9. An oral prayer was made for condoning the delay in filing the appeal under Section 5 of the Limitation Act and reliance was placed on. ILR 2 Raj 121 = (AIR 1953 Raj 7). That decision was given when Rajasthan had just been formed and the covenanting State of Pratabgarh from where the case came had given a decision in 1945 in which a contrary view was approved and the learned Judges who decided that case were satisfied that it was because of that decision that the appeal was not filed within time. In the present case, there was a clear pronouncement of a Division Bench of this Court in 1952 in Behari Dass's case, ILR 2 Raj 121 = (AIR 1953 Raj 7) that no period anterior to the making of an application for copies can be treated as period requisite for obtaining a copy. That decision was given in 1952 and there has been no contrary decision of this Court. As we have already pointed out above, the facts in (1961) ILR 11 Raj 913 were quite different. We therefore decline to condone the delay under Section 5 of the Limitation Act.

10. In the result, we dismiss the appeal. We leave the parties to bear their own costs of it.