

Onkar Vs. Jagmohan Singh

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Court : Rajasthan

Decided On : May-05-1981

Reported in : AIR1982Raj179; 1981()WLN231

Judge : S.K. Mal Lodha, J.

Acts : [Code of Civil Procedure \(CPC\) , 1908](#) - Order 41, Rule 22; [General Clauses Act, 1897](#) - Sections 3(35) and 9

Appeal No. : Civil Second Appeal No. 207 of 1980

Appellant : Onkar

Respondent : Jagmohan Singh

Advocate for Def. : R. Mehta, Adv.

Advocate for Pet/Ap. : S.N. Sharma, Adv.

Judgement :

ORDER

S.K. Mal Lodha, J.

1. This order will dispose of the objection raised by the office that the cross-objection filed by the respondent on Feb. 13, 1981 is barred by one day.

2. The appellant filed the appeal under Section 100, C. P. C. against the judgment and decree dated July 24, 1980 passed by the District Judge, Sriganaganagar on Apr. 5, 1980. The appeal was admitted on Nov. 6, 1980 and the substantial questions of law arising out of it were formulated and the summons of the appeal was served on the respondent on Jan. 13, 1981. On behalf of the respondent, cross-objection was filed on Feb. 13, 1981. There is no dispute regarding the aforesaid facts. The office has reported that as the cross-objection has been filed after 31 days, it is barred by one day. On this point, I have heard Mr. S.N. Sharma, learned counsel for the appellant and Mr. R. Mehta, learned counsel for the respondent.

3. It is urged by the learned counsel for the respondent that the cross-objection has been filed within one month from the date of the service of the summons of the appeal on him and, therefore, it is in time.

4. Order XLI, Rule 22 (1), C. P. C. reads as under :

'(1) Any respondent, though he may not have appealed from any part of the decree, may not only support the decree but may also slate that the finding against him in the Court below in respect of any issue ought to have been in his favour; and may also take any cross-objection to the decree which he could have taken by way of appeal, provided he has filed such objection in the Appellate Court within one month from the date of service on him or his pleader of notice of the day fixed for hearing the appeal, or within such further time as the Appellate Court may see fit to allow.

Explanation-- A respondent aggrieved by a finding of the Court in the judgment on which the decree appealed against is based may, under this rule, file cross-objection in respect of the decree in so far as it is based on that finding, notwithstanding that by reason of the decision of the Court on any other finding which is sufficient for the decision of the suit, the decree is, wholly or in part, in favour of that respondent'

It is clear that the respondent is required to file objection in the Appellate Court within one month from the date of the service on him or his pleader of notice of the

date fixed for hearing the appeal or within such further time, which the Appellate Court may think fit to allow. Section 3(35) of the [General Clauses Act, 1897](#) defines 'month' to mean a month reckoned according to the British Calendar

5. Section 9 of the aforesaid Act reads as under :

'9. Commencement and termination of time.-- (1) In any Central Act or Regulation made after the commencement of this Act, it shall be sufficient, for the purpose of excluding the first in a series of days or any other period of time, to use the word 'from', and, for the purpose of including the last in a series of days or any other period of time, to use the word 'to'.

(2) This section applies also to all Central Acts made after the third day of Jan., 1868 and to all Regulations made on or after the fourteenth day of January, 1887.'

It is clear from Section 9 that the date, i.e., Jan. 13, 1981, on which the notice was served, is to be excluded. A Division Bench of the Lahore High Court in *Puran Chand v. Mohd. Din*, AIR 1935 Lah 291, took the view that the General Clauses Act embodies a principle of equity which should be applied to decree apart from Statutes and that as the date from which one reckons may be either inclusive or exclusive, the period to be reckoned should exclude the day mentioned. It was held in *Badrinath v. State of Pepsu*, AIR 1957 Pepsu 14, that upon the principle underlying Section 9 of the General Clauses Act, the day on which the order was made had to be excluded.

6. Keeping in view the provisions of Section 9 and the principles laid down in the aforesaid two decisions, there is no escape from the conclusion that the date i.e. Jan. 13, 1981, on which the notice of the appeal was served on the respondent, is to be excluded for the purpose of calculating the period of one month prescribed under Order XLI, Rule 22, C. P. C. for filing the cross-objection. After excluding Jan. 13, 1981, the period of one month has to be computed in accordance with Section 3(35) of the General Clauses Act, which says that 'month' shall mean a month reckoned according to the British Calendar. Calculating the period of one month from Jan. 14, 1981, the cross-objection as filed on Feb. 13, 1981, cannot be said to be beyond one month. The cross-objection filed on Feb. 13, 1981, after the

service of notice of the appeal on the respondent on Jan. 13, 1981, is thus within the prescribed time mentioned in Order XLI, Rule 22, C. P. C.

7. The office objection that the cross-objection as it was presented after 31 days and so barred by one day, is overruled.

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