

**Mangilal Vs. Sitaram**

**Mangilal Vs. Sitaram**

**SooperKanoon Citation :** [sooperkanoon.com/756563](http://sooperkanoon.com/756563)

**Court :** Rajasthan

**Decided On :** May-09-1957

**Reported in :** AIR1957Raj339; 1957CriLJ1314

**Judge :** Dave, J.

**Acts :** Rajasthan (Criminal) General Rules, 1952 - Rule 144 and 144(3); Civil General Rules, 1952 - Rule 234; Limitation Act, 1908 - Sections 12

**Appeal No. :** Civil Revn. No. 287 of 1956

**Appellant :** Mangilal

**Respondent :** Sitaram

**Advocate for Def. :** Kishanlal, Adv.

**Advocate for Pet/Ap. :** Manakmal, Adv.

**Disposition :** Application allowed

**Judgement :**

ORDER

**Dave, J.**

(1) This is an application in revision by Mangilal applicant against the order of the District Magistrate, Jodhpur, dated the 16th of October 1956 dismissing his appeal

on the ground of limitation.

(2) The facts giving rise to it are that the petitioner had filed an application in the Court of the Magistrate First Class, Jodhpur, under Section 12 of the Rajasthan Premises (Control of Rent and Eviction) Act, 1950 for restoration of electric connection which was said to have been cut off by the other party. This application having been dismissed on 8th June 1956, the petitioner filed an appeal before the learned District Magistrate, Jodhpur. The appeal was filed on 14th of July 1956.

The appellant sought to exclude the period between 14th June 1956 when he had presented an application for copy of the Magistrate's order and 7th of July 1956 when the copy was actually delivered to him. If this period were excluded, the appeal would have been perfectly within time. This position is not contested even by learned counsel for the opposite party.

(3) It has, however, contended by the opposite party in the appellate Court that 21st June 1956 was given to the appellant for supplying the copy. The copy was not ready on that day and so it was not given to him. The copy was ready on 3rd July, 1956 but the petitioner took its delivery on 7th July 1956. According to learned counsel for non-petitioner, the period between 3-7-1956 and 7-7-1956 could not be excluded because the appellant ought to have been present in the Court on 3-7-1956 and obtained the copy. This argument found favour with the appellate Court,

(4) Learned counsel for the applicant has urged in this Court that it was the duty of the trial Court to affix a notice on the notice board of the Court to inform the petitioner by what time the copy would be ready and that since this was not done, he was entitled to get exclusion of the period between 3-7-1956 and 7-7-1956. In support of his argument, he has relied on the rules framed by this Court. The judgment of the learned District Magistrate shows that this argument was advanced before him as well, but it was dismissed on the ground that General Rules (Civil) 1952 were applicable only to the Civil Courts subordinate to the High Court and not to the Magistrates. It appears that the attention of the learned District Magistrate was not drawn to Rule 144 of the General Rules (Criminal) 1952. It runs as follows:

'144. (1) A definite date not ordinarily exceeding seven days ahead shall be fixed for the delivery of the copy and intimated to the applicant. The copy, as far as possible, shall be delivered on the date, so fixed.

(2) If for any reason, the copy is not ready for delivery on the date so fixed, the applicant shall be directed to attend on another date, when the copy may be expected to be ready for delivery.

(3) If the copy is not ready and the applicant does not appear on the date fixed, notice of the next date fixed for the delivery of copy shall be sent to him by post, if he has deposited the necessary postal charges. If necessary postal charges have not been deposited, it shall be affixed on the notice board of the Court."

(5) This rule corresponds to Rule 234 of the General Rules (Civil) 1952 and is worded in exactly the same language. Rule 2 of the General Rules (Criminal) says that these rules will apply to all proceedings and matters in all criminal Courts subordinate to the High Court and, therefore, it was not correct on the part of the learned District Magistrate to say that there were no rules on the point involved in this matter or that he or the Subordinate Magistrates were not bound by these rules

A perusal of Rule 144 would show that whenever an application for a copy is made, a definite date, not ordinarily exceeding seven days must be fixed for the delivery of the copy and it should be intimated to the applicant. The rule further enjoins that so far as possible, the copy must be delivered on the date so fixed. In the present case, the date fixed for the supply of the copy was 21st June 1956 and if the copy were actually supplied on that date, the petitioner could not be entitled to further exclusion of time.

It is, however, clear that the copy was not ready on that day and it does not appear from the record if the petitioner was intimated of another date for the supply of the copy. Sub-rule (2) of Rule 144 lays down that if for any reason the copy is not ready for delivery on the date fixed, by the Court, then the applicant should be directed to attend on another date when the copy may be expected to be ready for delivery. It is clear that the provisions of this rule were not complied with. Then

Sub-rule (3) further provides that if the copy is not ready and the applicant does not appear on the date fixed, notice of the next date fixed for the delivery of the copy should be sent to him by post if he has deposited the necessary postal charges.

It is on this sub-rule that learned counsel for the non-petitioner has put some stress. It is true that the petitioner does not seem to have deposited the necessary postal charges, but then the rule further provides that if necessary postal charges have not been deposited, a notice should be affixed on the notice board of the Court. If, such a notice were affixed on the notice board of the Court, then the petitioner would not have been entitled to exclusion of time between 3-7-1956 and 7-7-1956, but since no such notice was affixed, he is certainly entitled to the exclusion of this period. The petitioner's appeal was, therefore, well within time and the learned District Magistrate was wrong in dismissing it as time-barred.

(6) The revision application is, therefore, allowed. The order of the learned District Magistrate dated 16th October 1956 is set aside. The case be sent back to him with direction to register the appeal and decide it after hearing both the parties according to law. The petitioner will receive his costs in this Court from the non-petitioner.

**SooperKanoon - India's Premier Online Legal Search - [sooperkanoon.com](http://sooperkanoon.com)**