

Ram Lal Vs. Bhanwari Devi

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Court : Rajasthan

Decided On : Sep-13-1983

Reported in : 1983WLN646

Judge : G.M. Lodha and; G.K. Sharma, JJ.

Appeal No. : D.B. Civil Second Appeal No. 86/78

Appellant : Ram Lal

Respondent : Bhanwari Devi

Advocate for Def. : Mr. Bhandari

Judgement :

G.M. Lodha, J.

1. A reference has been made by Hon'ble Single Judge on 16th July, 1981 mentioning that there is a conflict of opinion between two single Bench judgments of this Court and, therefore, it is necessary that the conflict must be resolved by the larger Bench. The two decisions referred to relate to interpretation of Rules 234 and 235 of the General Rules (Civil) of Rajasthan. The first judgment is in Suresh Kumar Sharma v. Idol Laxmanji Maharaj 1973 RLW 160 and the second decision is of Mool Chand Soni v. Virendra Kumar 1980 RLW 121.

2. No one has appeared on behalf of the appellant Mr. U.N. Bhandari has appeared for the respondent and submitted that the view taken by this Court in Mool Chand Soni v. Virendra Kumar (supra) is correct and should be approved by this Bench Now.

3. It would be proper to mention the facts mentioned in the reference order in order to appreciate the controversy raised and the genesis of the dispute, which have given rise to this reference.

4. A Judgment and decree passed by Munsiff Magistrate Ajmer City (West), Ajmer in civil Suit No. 234/72 became the subject matter of appeal in the district court. The decree was passed on 11-12-19/4. The appellant submitted an application for obtaining certified copy of the judgment and decree of the trial court vide application dated January 3, 1975. The certified copy was not ready on 4-1-1975 as the date fixed for giving copy was 4-1-1975 and no further date for collecting the copy was intimated or notified. The certified copy of the decree was then ready on January 9, 1975 and a notice with regard to the certified copy being ready for delivery was put on the notice board on January 10, 1975. The certified copy was collected by the appellant on January 25, 1975 and the appeal was filed on 31st January, 1975.

5. The appellant's contention was that he was entitled to the exclusion of the time from January 10, 1975 to January 25, 1975 for the reason that no notice under Rule 234 of the General Rules (Civil) notifying the next date for collecting the certified copy was issued and that the notice that was put on the notice Board on January 10, 1975 was a notice issued under Rule 235 of the General Rules (Civil) and therefore, this notice cannot be taken into consideration for the purpose of computing the period of limitation. This view finds support from the judgment in Suresh Kumar Sharma's case (supra), but Mr. Bhandari, learned Counsel for the respondent submits that Suresh Kumar's case is not applicable in the present case.

6. According to Mr. Bhandari, once it is notified that the copy is ready under Rule 235 of the General Rules (Civil) then the earlier compliance of Rule 234 even if not made cannot be taken advantage of by the litigant who had applied for copy

because once notice is put on the notice board it must be presumed that the litigant becomes aware of it and the earlier noncompliance, the lapses of the offices became immaterial so far as computation for limitation for the purpose of exclusion of time requisite in obtaining the copy Under Section 10 of the Limitation Act is concerned.

7. We have given a thoughtful consideration to this above submissions and have also carefully gone through the above two decisions in addition to the earlier decision of Mangi Lal's case reported in .

8. Before we propose to deal in details the question of conflict, we must mention at the very outset that the plea of limitation and the law regarding debarring the litigants from filing an appeal or resort to a remedy under the law on account of expiry of limitation falls in the domain of a law, which curtails or in any case regulates legal rights of the person to seek remedy against the wrong. This branch of law also is essential in order to remove uncertainty about the fate of litigation. Even then it cannot be lost-sight of that in interpreting the rules or provisions of Limitation Act The court should not normally take stringent view to debar the litigants and deprive the litigant from resorting to legal remedies. The procedural law and administration of justice and the law of limitation in respect of filing of the appeals or revisions should be construed in such a manner that a litigant should not be deprived of his legal right on account of bar of limitation when the bar or prohibition is explicit and patent and admits of no debate or doubt. We are prefacing our judgment in order to mention the broad dimensions and aspects in such matters.

9. Now coming to the grass root of the issue involved, we would first like to reproduce Rules 234 and 235 of the Civil Rules, which reads as under:

Rule 234

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 as fixed.

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.

If the copy is not ready and the applicant does not appear on the date fixed, notice of the next date fixed for 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 disposed, it shall fee affixed on the notice board of the court.

Rule 235:

When a copy is ready, and the applicant or his authorised agent is present, the copy shall be given to him. If the applicant or his authorised agent is not present, a notice over the signature of the head of office shall be affixed to the notice board notifying that the copy is ready for delivery. If from the date of the fixing of the notice, the applicant appears within three months, the copy shall be delivered to him. If the applicant does not appear within this period, the copy shall be destroyed under the order of the Presiding Officer, an entry to that affect being made in the remarks column in the register of copying applications.

It is obvious on a plain reading of Rule 234 that whenever an application for copy is filed for obtaining copies in an ordinary way. Rule 233 which proceeds Rule 234 provides that as a rule it should be delivered not later than a week after the day on which the order was made on an ordinary application.

10. It should be noticed that under Rule 232 when application is urgent, the exception is that it should be given not later than the working day next after the day on which the order was made, it would thus be seen that the rules expect the copies to be given within a week though that is an exception of the rule making authority, which has remained mostly unfulfilled right from the time the Rules were framed and is yet to be achieved.

11. Rule 234 then provides details and the steps necessary in the procedure of delivery of copy. First step is that definite date should be given which should not exceed seven days for delivery of the copy and it must be intimated to the

applicant and the copy as far as possible shall be delivered on the date so fled. The rule making authority then expects the copying department to adhere to one week's period for delivery of the copy. Then comes the steps, which are to be taken by the copying department if they are failed to obey the mandate of Rules 235 & 234 by not giving the copy on the date fixed, the mandate is that the applicant should be intimated again of the next date when the copy is ready to be given delivery. Then comes the third step, when the office fails to prepare to copy again after the intimation on second date and then the notice of the next date fixed for delivery of copy should be sent to the applicant, if he is not present, in case he has deposited the necessary postal charges. If postal charges have not been deposited, then it shall be affixed on the notice board of the court.

12. A resume of the above detailed provisions of the Rules shows that the rule making authority was very conscious of the facts that once an application is made for giving a copy, it is the duty of the copying department to take all possible steps to supply the copy. If on account of paucity of steps or other reasons the office of the court comply the aforesaid provisions of rules and the exceptions of the rules making authority, then on every step of failure to comply with the provisions of Rules 233 and 234 of the General Rules (Civil), the litigant should not be allowed to suffer and the office should intimate the date again and again. The rule contemplates three such intimation one after the other on the failure of the office to prepare the copy. On the third occasion the rule expects that the litigant may not come again and again and therefore, if he deposits necessary postal charges, he should be intimated by post and in absence of that a notice should be affixed on the notice board of the court.

13. It should be pertinent to note that Rule 234 of the Rules contemplates notices when the copy for delivery is not ready. In contrast position to the copy being ready, the care of which is taken by Rule 235 of the General Rules (Civil). Once a copy is ready then Rule 233 comes into play and if an applicant or its authorised agent is present the copy should be given to him and if the applicant or his authorised agent is not present, a notice over the signature of the head of the office shall be affixed to the notice board notifying that the copy is ready for delivery.

14. The important distinction between Rules 235 & 234 is that whereas, Rule 234 contemplates a situation where the copy is not ready but is expected to be ready, Rule 235 comes into play only when the copy is ready. It is therefore, obvious that there are rules made for two different contingencies and they relate to different needs of the litigants and the procedure for preparation of the copy. They are neither overlapping nor interchangeable. From a plain and bare reading of Rules 234 and 235 it is obvious that both are meant for different situations and different purposes. We would, therefore, like to keep this distinction while considering the implication of the two decisions mentioned above and to find-out each of them lays down the correct law or not and in what manner the conflict between the two can be resolved.

15. In Sureshkwnar Sharmd's case, Hon'ble Justice Jain considered Rule 234 of the Civil Rules and observed as under:

5. Next question that, however, arises in this case is as to whether any notice was given to the parties. The copy of the application which is No. 8441, is on the record of the trial court. Admittedly the copies were not ready on 4-1-1969. This is also established by the endorsement on the certified copies given to Shri Rikhab Chand Jain on 12-2-1969. The endorsement is to the effect that the copies became ready on 28-1-69. From the application I find nothing to show that any next date was fixed to inform the party concerned to take the delivery of the copies. I also do not find, anything to show that any notice was given to the party under Rule 234. According to para 2 of Rule 234, if a copy is not ready on the date fixed, the application shall be directed to attend on another date when the copy may be expected to be ready for delivery. In the present case as noticed above the defendant or Shri Rikhab Chand Jain was not present on 4-1-69. Third paragraph of the rule provides that if a copy is not ready and the applicant does not appear on, the date so fixed, the notice of the next date fixed for the delivery, of the copy shall be sent to him by post in case he has deposited the necessary postal charges. It is not the case of the application that postal charges were deposited by him. This part of this paragraph further provides that if necessary postal charges have not been deposited, it shall be affixed on the notice board of the court. The requirement of the rules thus is that in case the party does not appear on the date

fixed for delivery of the copies & be copies are not ready on that date the next date shall be affixed on the notice board of the court. In the instant case, this requirement of the rule was not complied with, and if this was not done it cannot be said that the defendant who applied for copies, was at fault and he is not entitled to exclude the time required for obtaining the copies.

16. Hon'ble Judge has held that the requirement of Rule 234 thus is that in case the party does not appear on the date fixed for delivery of the copies and the copies are not ready on that date the next date shall be fixed on the notice board of the court It was then found as a matter of fact that the requirement of rule was not complied with. On the above terms the Hon'ble Justice held that since this was not done, it cannot be said that the defendant who applied for the copies, was at fault and he is not entitled to exclude the time require for obtaining the copies.

17. Again while regarding the case of Mangilal v. Sita Ram , the Hon'ble Judge has observed as under:

8. In that case on similar facts, an appeal against an order of the court of Magistrate First Class Jodhpur under the provisions of Rajasthan Premises (Control of Rent and Eviction) Act, 1950 was dismissed by the District Magistrate as time barred. The application for copy was given on 21-6-1956 as the date for applying the copy. The copy was not ready on that date and so it was not given to him. The copy was ready on 3-7-1966 it was contended that a period between 3-7-56 and 7-7-56 could not be excluded because the applicant ought to have been present in the court on 3-7-56 and obtained the copy. At that time Rule 234 was in force and it corresponds to Rule 234 of the General Rules (Civil), 1952. Dave J. as he then was held that as no further date was fixed for the supply of the copy on 21-5-57, and as the applicant had not deposited necessary postal charges, a notice should have been affixed under Rule 144(3) on the notice board of the court. If such a notice were affixed on the notice board of the court, then the applicant would not have been entitled to exclusion of time between 3-7-56 and 7-7-56. But since no such notice was affixed, he was certainly entitled to the exclusion of this period. In the present case, as well, no notice was affixed on the notice board of the copying department that the defendant should obtain his

copies on 28-1-69. He is, therefore, entitled to the exclusion of the period between 28-1-69 to 12-2-69.

18. Learned Judge found that Rule 144 was in force and it corresponds to Rule 234 and then relied upon the decision of Mangilal's case, in which Hon'ble Dave J. has held that as to further date was fixed for the supply of the copy and as the applicant had not deposited necessary postal charges, a notice should have been affixed under Rule 144(3) on the notice board of the court, and since no such notice was affixed, the applicant was certainly entitled to the exclusion of this period.

19. It would thus be seen that affixation of the notice on the notice board under Rule 144(3), as it was in 1955 and new Rule 234 has been emphasised in both the above judgments (Mangilal v. Sita Ram and Suresh Kumar v. Laxmanji Maharaj 1973 RLW 150, it has been held that if it has not been complied with then the applicant is entitled to exclude the period till he takes the copy.

20. In Mool Chandel's case 1981 RLW 121 Hon'ble Justice Dwarka Prasad distinguished Mangilal's case but the decision of Suresh Kumar's case has not been referred to the judgment and therefore, it cannot be presumed that it was not brought to the notice of Hon'ble J. In Mool Chandel Soni's case, the facts which gave rise to the appeal have been abstracted in para No. 2, which reads as under:

2. The decree in the instant case was passed by the trial court on March 16, 1979 and an application for obtaining certified copies of judgment and decree was filed on March 22, 1979, March 29, 1979 was the date fixed for issuing the certified copies, but on that day the copies were not ready for delivery and no further date appears to have been given to the appellant for obtaining the certified copies. On April 11, 1979 a notice under Rule 235 was issued and was affixed on the notice board notifying that the copies were ready for delivery. However, the appellant did not take delivery of the copies until May 23, 1979. In these circumstances, it is urged that the appellant was entitled to exclusion of time under Section 12 of the Limitation Act from March 22, 1979 upto May 23, 1979 when the delivery of certified copies was obtained by him. The first appellate court held that the time requisite for obtaining copies could only extend upto April 11, 1979 and the period

from April 12, 1979 to May 22, 1979 could not be allowed to the appellant as the time requisite for obtaining the certified copies of the judgment and decree of the trial court. On this ground the first appeal was dismissed is being barred by time.

21. From the above facts, it is obvious that though first of all the date, was notified when the application for copy was moved but the copy was not ready and no subsequent date was intimated to the appellant in that case. Therefore, a notice was issued under Rule 235 after the copy was ready. Learned Judge while interpreting Rules 234 and 235 of the Civil Rules, held that notice under Rule 235 is enough and such notice was sufficient to give limitation to the appellant about the preparation of copy and would serve the same purpose as Rule 234 would have done.

22. With due respect we are unable to appreciate the above analogy drawn between Rules 234 and 235 of the rules. As is obvious from the perusal of Rules 234 and 235, two rules contemplate two different situations. They are meant for different contingencies and they have been framed with different objects.

23. We have discussed in detail the various facts of these rules above and for avoiding repetition, we would like to mention that whereas Rule 234 occupies the applicability of the period when the copy is not ready but is expected to be ready, Rule 235 comes into operation after the certified copy is ready. This situation is too patent and requires no further elucidation. We are, therefore, of the view that the notice regarding preparation of copy which is ready under Rule 235 of the Civil Rules can not be a substitute for the notice under Rule 234 notifying the date when the copy is expected to be ready.

24. Learned Judge in Mool Chand Soni's case (supra) has observed as under:

4. It has always been held that under Section 12 of the Limitation Act the exclusion of time would be for such period which was requisite for obtaining a copy of the decree or judgment, appealed from. The time 'requisite' for obtaining a copy ordinarily commenced on the date when the copy is applied for and extends upto the date when the copy is ready for delivery. But if the applicant has no knowledge about the date on which the copy was likely to become ready for delivery and no

such date is fixed, then the applicant may be allowed time upto the date of actual taking of delivery. But once a notice is issued to the application that the copy is ready for delivery, under Rule 235 of the Rules, then the applicant cannot ignore such a notice and he cannot insist for exclusion of time upto the date of actual delivery of the copy, on the ground that notice under Rule 234 was not issued. Although the courts should be careful in complying with the provisions of the Rules and notice under Rule 234 should normally be issued in cases where the copy is not ready for delivery on the date fixed and the applicant also does not appear on that date. But it exists where the next date for delivery of copy is not fixed or intimated to the applicant under Rule 234, then a notice issued under Rule 235 would serve the same purpose of furnishing information to the applicant that the copy is ready for delivery. The crux of the matter is that the applicant must be made aware of the fact that the copy applied for would become ready by a particular date or that it has already become ready for delivery and till then the applicant is entitled to exclusion of time under Section 12 of the Limitation Act, as the time 'requisite' for obtaining the certified copy. Once a notice under Rule 235 is affixed on the notice board, the applicant cannot thereafter be heard to say that he had no knowledge about the date when the copy would become ready.

25. No doubt, the learned Judge has emphasised the object of Section 12 of the Limitation Act and we have got no hesitation to accept the observations so far as they relate to the object of Section 12. However, we find ourselves unable to accept the conclusions drawn in respect of the interpretation of Rules 234 and 235 on the basis of the above object because with due respect, we are of the considered opinion that Rules 234 and 235 have been enacted for different purposes and neither they are over-lapping nor they can be substituted by each other.

26. As mentioned above the notice under Rule 235 is posted on the notice board when the applicant or his authorized agent is not present. In case he is present the implication of passing of notice would lose the relevancy.

27. We cannot ignore the importance and salient feature that litigants are spread over in vast areas and they cannot attend the Copying section of the Courts day to

day for obtaining copies. It may also be noticed that Copying Rules contemplate to copy must be supplied normally within a week in case he has applied on ordinary fees and as the situation exists today This rule is not complied with and non-compliance and disobedience may be bonafide, because of paucity of staff and absence of mechanical devices, as they are not available in he Mansif Courts and District Courts and there is a great lush of work making the task of the copying section difficult. In such a situation to expect from the litigant that he would keep track as and when the copy is ready without prior information about its acceptency as contemplated by Rule 234, would be doing great injustice to him. It is with this object that Rule 234 of the Civil Rules should be given its independent, separate importance and its rigour should not be undersigned or lightened by resort to compliance of Rule 235. Whereas this interpretation would result in enhancing and achieving justice in its substantial form, the other interpretation by making Rule 234 regulatory and holding that compliance of Rule 234 and 235 is sufficient would also result in creating great hardship to the litigants. We are also not unmindful of the statutes that a particular rule cannot be held to be surplus or superfluous and if the rule making authority has provided requirement of two or three notices under Rules 234 & 235, each one will have to be given its due importance. Thus it is Section 12 of the Indian Limitation Act, which permits the exclusion of time in such period which was acquisitioned for to braining the copy. It is also true that time ordinarily means on the date when the copy is applied for but it is not true that it expects upto the date when the copy is ready for delivery only because unless the copy becomes ready for delivery on the date fixed when the application is given or on the extended date which again is intimated to the applicant and his representative or on the further extended date which is either intimated to the applicant or notified on the notice board, the applicant cannot have any knowledge as to when he has to be given delivery of the copy.

28. It should not be forgotten that Rule 235 is primarily meant for notifying those copies which are ready, so that if they are not collected, they can be destroyed after three months as mentioned in Rules. The information which is to be gathered from the notice under Rule 235 is notional and based on the legal fiction because even when the litigant or his representative is not available the knowledge will be attributed to them. Such a situation is resorted to in extreme cases when earlier

notices under Rule 234 have been complied with. We do not find it difficult to accept the view taken in Mool Chand's case that mere notice of Rule 235 would be enough and non-compliance of Rule 234 would not allow exclusion of time as laying down the current law. In other view the distinction drawn by the Hon'ble Judge in Mool Chaud Soni's case in respect of the decision and the provisions laid down in Mangilal's case also not based on any rulings.

29. As we have observed above the notice under Rule 235 contemplates different contingency and cannot be a substitute for Rule 234.

30. We have, therefore, no hesitation in holding that the decision of Mool Chand's case fails to lay-down the correct law. The decision of Suresh Kumar Sharma v. Laxndchand Ji Maharaj 1973, RLW 160 lays down the correct position of law in respect of Rules 234 and 235 of the General Rules.

31. In view of the above decision of ourselves, this appeal of the appellant Ram Lal, results to be accepted because the view of the first appellate court in respect of non-exclusion of time, which was taken on account of non-compliance of Rule 234, cannot be upheld.

32. In the present case, the judgment and decree was given and the application for certified copies of judgment and decree was given on 4.1.1975, but neither the copy was ready nor the further date was given on 4.1.1975. No notice was given when the copy was expected to be ready for delivery Under Section 234 and the only notice given on the notice board was on 10.1.1975 after the copy was ready on 9.1.1975 and therefore, obviously it was Under Rule 235. We have got no doubt that in view of this the appeal before the first appellate court was within limitation.

33. We, therefore, accept the second appeal & remand the case to the first appellate court for deciding the same on merits. We would have decided the second appeal itself after answering the reference to avoid duplicacy of hearing and prolonged pendency of the appeal in this court, because ultimately it would be for the first appellate court to decide the appeal on merits and. the appeal is pending in this Court since 1970 in a suit of 1972, which means that the litigation

has become more than one decade old and even now it would be at the stage of consideration of the first appeal only.

34. However, while accepting the appeal and remanding the case to the first appellate court, we order that the parties would bear their own costs of this appeal.

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