

Sachindranath Chatterjee Vs. State of Madras

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Court : Chennai

Decided On : Aug-07-1958

Reported in : AIR1959Mad73; 1959CriLJ209; (1958)2MLJ534

Judge : Ramaswami, J.

Acts : [Code of Civil Procedure \(CPC\) , 1908](#) - Order 45, Rule 7(1); Supreme Court Rules, 1950 - Order 12, Rule 3 - Order 21, Rule 17

Appeal No. : S.C. Misc. Petn. No. 102 of 1958 (Criminal)

Appellant : Sachindranath Chatterjee

Respondent : State of Madras

Advocate for Def. : V. Ramaswami, Adv. for ;Govt. Pleader

Advocate for Pet/Ap. : S. Mohan Kumaramangalam, Adv. for ;A.S. Siva Kaminathan, Adv.

Disposition : Application allowed

Judgement :

ORDER

Ramaswami, J.

1. This is an application for excusing delay in depositing the initial charges for printing records in S.C.S.L.P. CrI. Nos. 557 to 500 of 1957 against CrI. R. C. No. 59 of 1937 and in which leave has been granted by the Supremo Court.

2. Under Rule 17 of Order XXI of the Supreme Court Rules it is provided that the preceding orders of the Rules of the Supreme Court with reference to civil appeals with the necessary, modifications and adaptations are to apply to criminal appeals also. Order XII Rule 3 of the Supreme Court Rules provides that when an appellant having obtained a certificate fails to furnish the security or make the deposit as required under Order XLV Rule 7 (1) of the Civil Procedure Code the High Court may cancel the certificate or make such further or other order as the justice of the case may require.

The time contemplated under Order XLV Rule 7 (1) C. P. C. within which the deposit is required to be made under Rule 7 (1) (b) is 90 days or such further period not exceeding sixty days as the court may upon cause shown allow from the date of the decree complained of or within six weeks from the date of the grant of the certificate, whichever is the later date. The provision for time limit for making the printing deposit is mandatory and if the period is sought to be extended it should be an application for the purpose which has to be ordered by the Court.

3. In this case leave was granted on 13-1-1958 and the printing deposit has not been made within 150 days contemplated in the rules referred to above. Therefore the point which arises for consideration is whether this court has got power to extend the period if sufficient cause is shown.

4. The earliest decision of this Court is *Ramayya v. Lakshmayya*, ILR 1938 Mad 1007 : AIR 1938 Mad 796, where a full bench of this Court has held that the Court has power under Rule 9 of the Privy Council Rules to extend the period allowed for furnishing the security and the making of the deposit required by Order XLV, Rule 7 of the Code of Civil Procedure beyond the periods mentioned therein but the power should not be exercised without cogent reason.

The effect of the amendment of Order XLV Rule 7 of the Code is to limit the discretion of the Court in granting further time to a maximum period of sixty days

beyond ninety days which the applicant has of right and if that provision stood alone the court would have no discretion to grant time beyond the further period of sixty days. But Rule 9 of the Privy Council Rules leaves a discretion in the Court to extend the time and by reason of Section 112 of the Code that rule must prevail over Order XLV, Rule 7 of the Code.

5. In *Pitchaiah v. Narasimhacharyulu*, 1956 2 Andh WR 106 : AIR 1956 Andh WR 120, a full bench of the Andhra Pradesh High Court has held :

'The provisions of Order 45 Rule 7, Civil Procedure Code are only directory and not mandatory. They do not provide for a penalty for failure to comply with the requirements laid down therein. It is only Rule 9 of the Privy Council Rules (now Rule 3 of Order 12 of the Supreme Court Rules) which while providing for the consequences of default also enables the court at the same time to pass such further or other orders as the justice of the case requires.'

6. The Orissa High Court has held in *Pitam-hari Dibya v. Chandrasekhar*, : AIR1954 Ori71 thus :

'A rule of procedure fixing time should ordinarily be held to be obligatory and cannot without strong reasons be deemed to be directory unless the power of extending the time is given to the Courts. It would, therefore, appear that the Court has no discretion to extend the time beyond 150 days prescribed under Order 45 Rule 7. But the Court is bound to give effect to the rule of the Supreme Court in preference to the provisions of the Civil Procedure Code when a conflict between the two arises. Therefore the Court has power to extend time by virtue of the express provision in Rule 5 of the Supremo Court rules. But this power should be exercised with great caution only where there are cogent reasons for doing so.'

7. The Nagpur High Court has held in *Gulam Hussain v. Mansurbeg*, AIR 1952 Nag 302, that the time for furnishing security for costs can be extended beyond that which is prescribed in the second part of Rule 7 of Order XLV but that a sufficiently strong case will have to be made out before this indulgence can be granted. Ordinarily the position in Rule 7 must be adhered to; very cogent reasons will have to be given before the court will enlarge the time prescribed by the Code.'

8. In *Gunvanthi Devi v. Bihar State*, : AIR1958 Pat236 , is was held thus: --

'It is true that the time for depositing security under Order 45 Rule 7 would expire in this case on the 1st of February, 1957 but we have a discretion in a proper case to extend the time even beyond the limit provided by Order 45 Rule 7 because of the provisions of Order 12 Rule 3 of the Supreme Court Rules, read with Section 112 of the Code of Civil Procedure, That is the view expressed by a division bench of this High Court in S. A. No. 61 of 1952 in its order dated the 29th January, 1954 and also by another division bench of this High Court in S. A. No. 129 of 1952 in its order dated the 27th July, 1953.'

9. The learned Additional Government Pleader invites my attention to an unreported decision of this Court of similar import by Krishnaswami Nayudu and Basheer Ahmed Sayeed, JJ. in S. A. Nos. 2038 and 2039 of 1950.

10. In these circumstances I hold that I have got power to extend the time provided strong and convincing grounds are put forward for granting extension or time asked for.

11. The learned Advocate for the Petitioner Mr. Mohan Kumaramangalam points out that till now though the High Court office had no obligation to do so by courtesy a memo was being sent to the advocates concerned calling for deposit of printing charges. The practice is said to have become so common that the advocates awaited the receipt of memos for depositing printing charges. The office note also refers to the fact that there has been such a practice. In other words the learned Advocate has made out that it was due to no wilful default on the part of his client that the printing charges have not been deposited in time.

I need not point out the general rule that no man can be prejudiced by any act of court the maxim being '*Actus curiae, neminem gravabit*'. It is the duty of court in such cases to help the petitioner as to avoid the cancellation of the certificate granted to him and for which he has not in anyway wilfully contributed. Therefore I excuse the delay and give one week's time to deposit the printing charges.

