

The Special Tahsildar (L.A.), B.H.E.L. Vs. M.G. Sampathkumar and anr.

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Court : Chennai

Decided On : Dec-20-1993

Reported in : (1994)2MLJ406

Appellant : The Special Tahsildar (L.A.), B.H.E.L.

Respondent : M.G. Sampathkumar and anr.

Judgement :

ORDER

Bakthavatsalam, J.

1. The question referred to us is whether an application under Section 5 of the Limitation Act for condonation of delay in filing an appeal is maintainable, if the application for certified copies of the judgment and decree of the trial court has been made after the expiry of the time prescribed for the appeal.

2. C.M.P. Nos. 14783, 15250, 13001, 13002, 11215 and 11216 of 1993 are filed to condone the delay in filing the ASSR No. 42494 of 1992, ASSR. No. 50879 of 1992, ASSR. No. 92793 of 1990, ASSR. No. 92795 of 1990 CMASR. No. 56162 of 1993 and CMASR. No. 56162 of 1993 respectively sought to be preferred to this Court against the judgment and decree made in L.A.O.P.No.26 of 1990 on the file of Sub Court, Cuddalore,in L.A.O.P. No. 8 of 1985 on the file of Sub Court, Ponnammallee, in L.A.O.P. No. 106 of 1987 on the file of Sub Court, Arani in L.A.O.P. No. 109 of 1987 on the file Sub Court, Arani, in M.A.C.T.O.P. No. 250 of

1987 on the file of Motor Accidents Claims Tribunal, Coimbatore and in M.A.C.T.O.P. No. 250 of 1987 on the file of Motor Accidents Claims Tribunal, Coimbatore respectively.

3. When these petitions were posted before a Division Bench, to which one of us (Srinivasan. J.) was a party the petitions were opposed by learned Counsel for the respondents on the ground that the petitions were not maintainable as the applications for obtaining certified copies of the judgment and decree of the court below have been made after the expiry of ninety days from the date of the delivery of the judgment in each case. One of us (Srinivasan, J.) has expressed a view in *Molukka Naidu v. R.V. Palaniappan* (1993) 2 L.W. 382 : 1993 T.L.N.J. 278, that the petitions are maintainable and in each case the court has to decide whether the delay is properly explained. However, Abdul Hadi, J. has taken a different view in *S. Pakkiaraj v. S.N. Kulasekaran* C.M.P. No. 14089 of 1991 etc., by order dated 14.9.1993, holding that an application filed under Section 5 of the Limitation Act is not maintainable if the application for certified copies of judgment and decree of the lower court has not been made within ninety days from the date of decree. The question depends upon the interpretation of the decision of the Supreme Court in *Ramlal v. Reva Coalfields Limited* : [1962]2SCR762 and that of a Division Bench of this Court in *The Land Acquisition Officer v. Kannan Pillai* (1992) 2 L.W. 28, wherein the Division Bench has approved the ruling in *Romalingom Pillai v. Arunachalam Pillai* (1988) 2 M.L.L 139.

4. It is not necessary to refer to the facts, as alleged in the affidavits at this stage. Part II of the Limitation Act, 1963 speaks of limitation of suits, appeals and applications. Section 5 of the Limitation Act, 1963, provides for extension of prescribed period in certain cases and it reads as follows: Extension of prescribed period in certain cases : Any appeal or any application, other than an application under any of the provisions of Order 21 of the Code of Civil Procedure, 1908 may be admitted after the prescribed period if the appellant or the applicant satisfies the court that he had sufficient cause for not preferring the appeal or making the application within such period....

The definition for the term 'period of limitation' is found in Section 2(j) of the Limitation Act, 1963 (hereinafter referred to as the 'Act') and Section 2(j) reads as follows: 'Period of limitation' means the period of limitation prescribed for any suit, appeal or application by the Schedule and 'prescribed period' means the period of limitation computed in accordance with the provisions of this Act....

Section 12 is also relevant for the purpose of deciding the issue in this case which refers to the computation of period of limitation and it reads as follows:..Exclusion of time in legal proceedings : (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....

In *Ramalingam Pillai v. Arunachalam Pillai and Ors.* : (1988)2MLJ139 , a question arose as to whether the appellant who preferred an appeal, is entitled to the benefits of computing the period of limitation where such an application has been made after the prescribed period for preferring the appeal. In that case, it has been held that when the petitioner, who had admittedly made an application for copies of the judgment and decrees after the expiry of the period of limitation, cannot claim to exclude the time taken for obtaining the copies while computing the period of ninety days under Article 116(a) of the Limitation Act, 1963. This question again came up for consideration before Padmini Jesudurai, J. in an unreported decision

in C.M.P. No. 2828 of 1991 in CRPSR. No. 5453 of 1991 and by order dated 17.7.1991, the learned Judge rejected the plea that Section 5 of the Limitation Act can never be invoked in a case where the copy application has been made after the period of limitation. In that case, the learned Judge referred to the decision in (1988) 2 M.L.J. 139 and held that the above mentioned decision cannot be taken as laying down the law and that what is laid down in the above decision is not that if the copy application is made after the period of limitation, Section 5 of the Limitation Act can never be invoked. A Division Bench of this Court in *The Land Acquisition Officer v. Kannan Pillai* (1992) 2 L.W. 28, has held that if the application for copy of the judgment and decree itself was made after the expiry of the period of limitation there is no scope at all under Section 12 of the Limitation Act for exclusion of the time taken for obtaining the said copy while computing the period of limitation. In that case, the Division Bench considered the scope of Article 116(a) of the Limitation Act, 1963, under which a period of 90 days is prescribed for preferring an appeal before this Court and time commences to run from the date of the decree. The Division Bench referred to a passage in : (1988)2MLJ139 and accepted the view of a learned single Judge of this Court. One of us (Srinivasan, J.) had an occasion to consider the issue in the case in *Molukka Naidu and three Ors. v. R.V. Palaniappan* (1993) 2 L.W. 382 : 1993 T.L.N.J. 278 and explained the decision of the Division Bench in (1992) 2 L.W. 28 mentioned above. In that case, one of us (Srinivasan, J.) following the judgment of the Supreme Court in *Parthasarathy v. State of Andhra Pradesh* : AIR 1966 SC38 , has held that if the application for copies of the judgment and decree are filed after the period of 90 days from the date of judgment, naturally, the time taken by court for issuing certified copies cannot be excluded under Section 12 of the Act. It has also been held the Division Bench has not held that Section 5 cannot be invoked by a party who has applied for certified copies of judgment and decree after the expiry of a period of 90 days and that the party has to explain that period also as part of the delay. However, Abdul Hadi, J. in an unreported decision in *S. Pakkiaraj v. S.N. Kulasekaran* C.M.P. No. 14089 of 1991 etc., by order dated 14.9.1993, differed from the decision rendered by one of us (Srinivasan, J.) which is reported in 1993 T.N.L.J. 278 : (1993) 2 L.W. 382 and also other decisions, cited supra, except that of the decision rendered by Padmini Jesudurai, J. in C.M.P. No.

2328 of 1991 in C.R.P.S.R. No. 5453 of 1991, dated 17.7.1991, which has not been brought to the notice of any of the learned Judges, who decided the issue, in the decisions cited above.

5. In *Ramlal v. Reva Coalfields Limited* : [1962]2SCR762 , the Supreme Court had an occasion to consider the scope of Articles 5 and 14 of the Limitation Act, 1908. The short question that fell before the Supreme Court for consideration was with regard to construction of Section 5 of the Limitation Act, 1908. The appellant therein a firm, suffered an ex parte decree and the decree was passed on 9.11.1954. Against the said decree the appellant therein preferred an appeal on 17.2.1955. On 19.2.1955, the appellant filed an application under Section 5 of the Limitation Act and prayed that one day's delay in filing the appeal should be condoned because one of the partners of the firm, fell ill on 16.2.1955, the last day in filing the appeal. The delay was not condoned and the appeal was dismissed on 6.8.1955. When this issue came up before the Supreme Court, the Supreme Court considered the scope of Section 5 of the Limitation Act, 1908 and also approved the observations of this Court in *Krishna v. Chathappan* I.L.R. 13 Mad. 269, and it has held as follows:..In construing Section 5 it is relevant to bear in mind two important considerations. The first consideration is that the expiration of the period of limitation prescribed for making an appeal gives rise to a right in favour of the decree-holder to treat the decree as binding between the parties. In other words, when the period of limitation prescribed has expired the decree-holder has obtained a benefit under the law of limitation to treat the decree as beyond challenge, and this legal right which has accrued to the decree holder by lapse of time should not be light-heartedly disturbed. The other consideration which cannot be ignored is that if sufficient cause for excusing delay is shown discretion is given to the Court to condone the delay and admit the appeal. This discretion has been deliberately conferred on the court in order that judicial power and discretion in that behalf should be exercised to advance substantial justice. As has been observed by the Madras High Court in *Krishna v. Chathappan* I.L.R. 13 Mad. 269.

Section 5 gives the Court a discretion which in respect of jurisdiction is to be exercised in the way in which judicial power and discretion ought to be exercised upon principles which are well understood; the words 'sufficient cause' receiving a

liberal construction so as to advance substantial justice when no negligence nor inaction nor want of bona fide is imputable to the appellant....

In that case, the Supreme Court, construing the term 'within such period' has held as follows:.The context seems to suggest that 'within such period' means within the period which ends with the last day of limitation prescribed. In other words, in all cases falling under Section 5 what the party has to show is why he did not file an appeal on the last day of limitation prescribed. That may inevitably mean that the party will have to show sufficient cause not only for not filing the appeal on the last day but to explain the delay made thereafter day by day. In other words, in showing sufficient cause for condoning the delay the party may be called upon to explain for the whole of the delay covered by the period between the last day prescribed for filing the appeal and the day on which the appeal is filed. To hold that the expression 'within such period' means during such period would in our opinion be repugnant in the context....

The Supreme Court in that case has emphasized the fact that even after sufficient cause has been shown a party is not entitled to the condonation of delay in question as a matter of right and the proof of a sufficient cause is a condition precedent for the exercise of the discretionary jurisdiction vested in the Court by Section 5 of the Act. Nowhere in that decision it has been held that an application under Section 5 of the Limitation Act is not maintainable. In *Parthasarathy v. State of Andhra Pradesh* : AIR 1966 SC38 , the Supreme Court has construed Sub-section (2) of Section 12 of the Limitation Act, 1963 and also its object and held as follows:.Now, coming to Sub-section (2) of Section 12 of the Limitation Act, the object of the said subsection is clear and it is to enable a party who seeks to file an appeal against an order to obtain a copy thereof, for without such copy he cannot make an effective representation against the validity of the order. For that reason, in computing the period of limitation the time taken for obtaining a certified copy of the order is excluded. It excludes time in the course of computation; it does not add to the period of limitation any period earned earlier. In computing or calculating the period of limitation from a particular point the sub-section enables the exclusion of a time from that period caused by an event that intervened between the commencement and the termination of the said period. It has no

concern with any events anterior to the commencement of the period of limitation or posterior to the said partly. If time taken for obtaining a copy of the order before the commencement of the period of limitation could be, excluded on the partite of reasoning, time taken for obtaining a copy of the order after the period of limitation also could be excluded. This would lead to an anomalous position; a party can keep quiet till the period of limitation has run out and thereafter apply for a certified copy of the order and claim to exclude the time taken for obtaining the certified copy of the order from the period of limitation. That could not have been the intention of the Legislature. The object of the Legislature, therefore, was to enable a party to exclude the time requisite for obtaining a copy of the order after the period of limitation has commenced. The pharaseology used in Sub-section (2) of Section 12 of the Limitation Act carried out the object. We, therefore, hold that the petitioner cannot exclude the time requisite, for obtaining a copy of the order before the High Court refused to give leave. The petition is clearly out of time....

A close reading of the decision of the Supreme Court, mentioned above, clearly shows that the object of the Legislature was to enable a party to exclude the time requisite for obtaining a copy of the order after the period of limitation has commenced. What all the Supreme Court has stated is that a party cannot keep quiet till the period of limitation has run out and thereafter apply for a certified copy of the order and claim to exclude the time taken for obtaining the certified copy, of the order from the period of limitation. Here also, we are not able to see that the Supreme Court has held that a petition under Section 5 of the Limitation Act, 1963 itself is not maintainable.

6. When an application is filed for condoning the delay under Section 5 of the Act, in our view, the only requirement for the appellant/ applicant is to satisfy the court that he had sufficient cause for not preferring the appeal or making the application within such period. Article 116 of the Limitation Act, 1963 is as follows:

Description of suit Period of limitation Time from which period begins to run(1) (2) (3)116. Under the Code ofCivil Procedure,1908-(a) to a High Court from Ninety days The date of the decree or order.any decree or order(b) To any other courtfrom any decree ororder. Thirty days The date of the decree or order.

We are not able to find how any appellant/applicant can be prevented from filing any application under Section 5 of the Act. Even if the appellant/applicant has not applied for certified copies of decree and order before the prescribed period, in our view, it is to be seen whether 'sufficient cause' has been shown. That is all the Supreme Court in *State of West Bengal v. Howrah Municipality* : [1972]2SCR874a had an occasion to consider the term 'sufficient cause' which occurs in Section 5 of the Act. After referring to the decision in *Ramlal v. Reva Coalfields Limited* : [1962]2SCR762 , in the abovementioned decision, the Supreme Court has held as follows:..It has been pointed out by this Court in *Ramlal v. Reva Coalfields Limited* : [1962]2SCR762 , as follows at page 755:

In construing Section 5 it is relevant to bear in mind two important considerations. The first consideration is that the expiration of the period of limitation prescribed for making an appeal gives rise to a right in favour of the decree-holder to treat the decree as binding between the parties. In other words, when the period of limitation prescribed has expired the decree-holder has obtained a benefit under the law of limitation to treat the decree as beyond challenge, and this legal right which has accrued to the decree-holder by lapse of time should not be lightly disturbed. The other consideration which cannot be ignored is that if sufficient cause for excusing delay is shown discretion is given to the court to condone delay and admit the appeal. This discretion has been deliberately conferred on the court in order that judicial power and discretion in that behalf should be exercised to advance substantial justice. As has been observed by the Madras High Court in *Krishna v. Chattappan* I.L.R. (1890) Mad. 269, Section 5 gives the court a discretion which in respect of jurisdiction is to be exercised in the way in which judicial power and discretion ought to be exercised upon principles which are well understood; the words 'sufficient cause' receiving a liberal construction so as to advance substantial justice when no negligence nor inaction nor want of bona fide is imputable to the applicant.

From the above observations it is clear that the words 'sufficient cause' should receive a liberal construction so as to advance substantial justice when no negligence or inaction or bona fide is imputable to a party....

Looking at the leading decisions of the Supreme Court in *Ramlal v. Reva Coalfields Limited* : [1962]2SCR762 , and in *State of West Bengal v. Howrah Municipality* : [1972]2SCR874a , mentioned above, the principle appears to be that the connotation 'sufficient cause' should receive a liberal construction so as to advance substantial justice and ordinarily delay in preferring appeal should be condoned, when no negligence or inaction or want of bona fide is imputable to a party. It is apt to refer to the decision of the Supreme Court in *Dinabandhu v. Jadumoni* A.I.R. 1954 S.C. 411, where the Supreme Court has considered the decision in *Krishna v. Chattappan* I.L.R. (1890) Mad. 269, and observed as follows:..As was observed in the Full Bench decision in *Krishna v. Chattappan* I.L.R. (1890) Mad 269, in a passage which has become classic the words 'sufficient cause' should receive 'a liberal construction so as to advance substantial justice when no negligence nor inaction nor want of 'bona fides' is imputable to the appellant....'

So, in our view, in both the decisions in *Parthasarathy v. State of Andhra Pradesh* : AIR 1966 SC38 . and in *Ramalingam Pillai v. Antnachalam Pillai* : (1988)2MLJ139 , mentioned above, it has been held that for the purpose of calculating the period of limitation, a party cannot claim to exclude the time taken for obtaining the copies while computing the period of ninety days. Even in *Molukka Naidtt and three Ors. v. R.V. Palaniappan* (1993) 2 L.W. 382 : 1993 T.L.N.J. 278, cited supra it has been held by one of us (Srinivasan, J.) that only Section 12 of the Act cannot be invoked by the party.

7. We are not able to find any decision which holds that the application under Section 5 of the act itself is not maintainable, we are not able to find any principle laid down by any Court as if Section 5 of the Act cannot be invoked at all by the party, who has applied for certified copies of decree and order, after the prescribed period. What all required is, in our view, that a person who files an application under Section 5 of the Act, has to explain that period also as a part of the delay. That is all. In fact, *Padmini Jesudurai*, in C.M.P. No. 2328 of 1991 in CRPSR. No. 5453 of 1991 dated 17.7.1991, has taken a similar view.

8. We are not able to agree with the view expressed by Abdul Hadi, J. wherein the learned Judge has held that Section 5 of the Act itself is not applicable, if certified copies of the decree and order are obtained by filing a petition, after the prescribed period. It is one thing to say that entertaining an application under Section 5 of the Act and then decide about its maintainability on merits and the other thing is to reject the same at the threshold on the ground that it is not at all maintainable. So, when deciding any petition, the only question to be decided is whether 'sufficient cause' has been shown for such delay or not. It cannot be said that any of the provision of the Limitation Act prohibits in filing such an application under Section 5 of the Act, in any circumstance. We are not able to find any decision which holds that the application under Section 5 of the act is not at all maintainable. It is apt to refer to the observations of the Supreme Court in Collector, Land Acquisition, Anantang v. Katiji : (1987)ILLJ500SC , wherein it has been held as follows:.It must be grasped that judiciary is respected not on account of its power to legislate injustice on technical grounds but because it is capable of removing injustice and is expected to do so....

9. As such, we are not able to hold that these C.M.Ps. are not maintainable, in these cases where certified copies of judgment and decree have been applied for and obtained after the last date prescribed under the provisions of the Act.

10. In the result, the order of reference is answered as follows:

Section 5 of the Limitation Act does not prohibit any appellant/applicant to file an application under Section 5 of the Limitation Act to condone the delay, even if the appellant/applicant has applied and obtained certified copies of judgment and decree after prescribed period of limitation in all cases what is to be decided is whether sufficient cause has been shown or not.

Srinivasan, Bakthavatsalam and Janarthanam, JJ. : Since we have answered the reference as above the petitions maybe posted before the Bench which is constituted for hearing of such petitions for final disposal.