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SooperKanoon Citation : sooperkanoon.com/865570

Court : Kolkata

Decided On : Dec-12-1898

Reported in : (1899)ILR27Cal57

Judge : Francis W. Maclean, K.C.I.E., C.J.;Prinsep and ;Ameer Ali, JJ.

Appellant : Moti Chand and anr.

Respondent : Pull Chand and anr.

Judgement :

Francis Maclean, K.C.I.E., C.J.

1. The appellants are admittedly out of time, and though no doubt we have a discretionary power--a power to be judicially exercised, upon judicial principle-under Rule 11 of chapter 7 of the High Court Rules, Appellate Side, to enlarge the time, upon 'sufficient cause' being shown, in the exercise of that discretion I do not see my way to acceding to the present application. The delay which occurred from the 13th August to the 22nd September is absolutely unexplained. So far from any sufficient cause having been shown for enlarging the time, no cause whatever has been shown. Why did the applicants wait from August 13th to September 22nd before applying for the office copies, and then only apply when the offices, if not actually closed, were on the eve of being closed for the vacation? This delay of nearly six weeks--three-fourths of the period allowed for delivering the paper book, is absolutely unexplained. Again, the applicants might have made the present

application to the Judge sitting on the Original Side three weeks ago, i.e., immediately the Courts resumed after the vacation. There is no explanation whatsoever of this further delay. Litigants must understand that the rules and orders of this Court are intended to be, and must be, complied with, and I regret as I have had occasion previously to observe the laxity, which has crept into the practice here on this head. Some litigants in these Courts would almost appear to be under the impression, as the result of that laxity, that they are entitled to have the time prescribed by the rules enlarged for the mere asking. I desire to dissipate any such idea. In exercising our discretion under the rule we are bound to regard, not only the view of the applicants but the rights which the respondents may have acquired by reason of the default of the other side. Though no rule fettering the exercise of our discretion should be laid down, the enlargement of time for doing anything after judgment ought to be more cautiously granted than before judgment. But be that as it may, each case must be considered according to its particular circumstances. Litigation in this country is so protracted, and so much time is allowed to litigants to take the various steps, specially as regards appeals, that I am not disposed to extend such time, unless sufficient grounds be shown. The application must be refused with costs.

2. Office copies of the exhibits mentioned in the above application were received by the attorneys for the appellants on the 19th December 1898, and on the same day the attorneys instructed their printer to print their paper book as quickly as possible, and a copy of the paper book ready for binding was sent to the attorneys' office on the 29th December 1898, whereupon the said attorneys wrote to the attorneys for the respondents stating that they had received from the printer their paper book ready for binding and offered the same for comparison. On the 31st December 1898, the attorneys for the appellants received their paper books and sent three copies of them to the attorneys for the respondents, who received and retained them. On the 4th January 1899 upon the appeal being called on the appellants applied to the Court upon notice to the respondents for leave to file their paper book.

Maclean, C.J.

3. This application is in effect the same as that which was made to us, and which we refused on the 12th December last; and we should, I think, be stultifying ourselves if we were now to accede to it. It is an ingenious attempt to obtain indirectly the same benefit as would have accrued to the applicant, if we had granted the previous application, and, as I pointed out during the argument, to obtain an advantage as against the respondents, from the accident of the case before it on the list having occupied many days in argument. But apart from any such consideration, if the present application had been the first and not the second and had been res Integra, the applicants would still have been face to face with the difficulty that they are unable to show any sufficient grounds which in the exercise of our discretion would warrant us in acceding to the application. No doubt we may, under the concluding paragraph of Rule 11 of Chapter 7 of the Appellate Rules exempt the applicants, 'upon sufficient grounds verified by affidavit,' from the operation of the rules, but no grounds have even been suggested to us. I have heard none; the only thing suggested is that the paper book is now ready. That is not sufficient, when the paper book ought to have been filed some time ago, and there is no explanation of the delay, If we were to accede to this, application we should be depriving the respondents of the vested interest they have acquired in their judgment and depriving them of that interest without any sufficient ground being shown for so doing. In my opinion we ought not to interfere in cases of this class save under special circumstances and none have been shown in the present case. The application must be dismissed with costs.'