

PRIVY COUNCIL

Krishnasami Panikondar

Vs.

Ramasami Chettiar and others

P.C.A No. 119 of 1915

(Lord Parker Of Waddington, CJ, Lord Wrenbury, Sir John Edge, Mr. Ameer Ali and Sir Lawrence Jenkins.)

8.11.1917

JUDGMENT

Sir Lawrence Jenkins J.

1. On the 4th November, 1908 the High Court of Madras dismissed an appeal from an original decree on the ground that it was barred by limitation. From this order of dismissal the present appeal has been preferred, and in its support it has been contended, first, that the order was without jurisdiction and, secondly, that it was erroneous on the merits.
2. The original decree was passed on the 8th February 1905, in the Court of the Additional Subordinate Judge at Tanjore in the plaintiff's favor.
3. Against it the first defendant, Krishnasami Panikondar, preferred an appeal to the Madras High Court. The last day for its presentation was the 10th July, when the Court reopened after vacation; but it was not presented until the 12th July 1905.
4. It was then returned to the appellant as out of time. It thus became necessary for the appellant to satisfy the Court that he had sufficient cause for not presenting his appeal within the prescribed period.
5. He accordingly again presented his appeal on the 26th July, supported this time by affidavits purporting to explain the delay. The application for admission came before *Sankaran Nair, J.*, sitting as a single judge, and on the 31st July he made an order in these terms: "Delay excused in the circumstances and appeal admitted."
6. When notice of this appeal was served on the respondents, does not appear, but in

the following November, affidavits were filed controverting the material allegations in those on which delay had been excused. Further affidavits were subsequently filed on both sides.

7. The appeal thus admitted came on for hearing before a Division Bench of the Court on the 7th October, 1908, and at the outset it was objected that the appeal was out of time, and so not competent. The Court, after an examination of the several affidavits, accepted this view and dismissed the appeal as provided by section 4 of the Indian Limitation Act. A subsequent application for review failed.

8. It has been argued that the admission of the appeal by Sankaran Nair, J., was final, and that the Division Bench had no jurisdiction at the hearing of the appeal to reconsider the question whether the delay was excusable. But this order of admission was made not only in the absence of Ramasami chettiar, the contesting respondent, but without notice to him. and yet in terms it purported to deprive him of a valuable right, for it put in peril the finality of the decision in his favor, so that to preclude him from questioning its propriety would amount to a denial of justice. It must, therefore, in common fairness be regarded as a tacit term of an order like the present that though unqualified in expression it should be open to re-consideration at the instance of the party prejudicially affected and this view is sanctioned by the practice of the Courts in India.

9. But there remains the contention that, at any rate, the Court exceeded its jurisdiction in permitting the question of limitation to be reopened at so late a stage as the hearing of the appeal. This objection, however, has all the appearance of an after-thought. It was not urged at the hearing, though the appellant was represented by so experienced an advocate as Sir Bashyam Ayya nagar; nor was it even mentioned in the original review petition. It was no doubt advanced at a later stage as an additional ground for review, but it met with no success, for the High Court held that the procedure adopted in this case was in accordance with the usual practice of the Court. The authorities moreover, show that this practice is not peculiar to Madras, and in the circumstances their Lordships hold that the Division Bench had jurisdiction to reconsider the sufficiency of the cause shown, and to do this at the hearing of the appeal.

10. But while this procedure may have the sanction of usage, it is manifestly open to grave objection. It may, as in this case, lead to a needless expenditure of money and an unprofitable waste of time, and thus create elements of considerable embarrassment when the Court comes to decide on the question of delay. Their Lordships therefore

desire to impress on the Courts in India the urgent expediency of adopting in place of this practice a procedure which will secure at the stage of admission, the final determination (after due notice to all parties) of any question of limitation affecting the competence of the appeal.

11. On the merits little need be said. It is the duty of a litigant to know the last day on which he can present his appeal, and if through delay on his part it becomes necessary for him to ask the Court to exercise in his favour the power contained in section 5 of the Indian Limitation Act, the burden rests on him of adducing distinct proof of the sufficient cause on which he relies. It was with the claim of such a litigant that the Division Bench had to deal, and after a careful and critical examination and appreciation of the evidence, the learned judges distrusted his explanation and held that sufficient cause had not been shown. The Court therefore declined to exercise in his favour the power to excuse delay. It has not been shown that in this the Court fell into any error, and their Lordships consequently decline to interfere with its decision. They will therefore humbly advise His Majesty that this appeal should be dismissed with costs.

Appeal dismissed.