

SUPREME COURT OF INDIA

A. D. Partha Sarathy

Vs.

State of A.P.

Petn. for Special Leave to Appeal (Criminal) No. 169 of 1965

(K. Subba Rao, Raghubar Dayal and R. S. Bachawat, JJ.)

07.05.1965

JUDGEMENT

SUBBA RAO, J.:

1. This is an application for condoning the delay of 62 days in filing the petition for Special Leave to Appeal to this Court against the judgment of the High Court of Judicature for Andhra Pradesh at Hyderabad in Criminal Revision Case No. 681 of 1963. On April 14, 1964, the High Court of Andhra Pradesh delivered judgment in Criminal Revision Case No. 681 of 1963. On April 15, 1964, the petitioner filed an application in that Court for obtaining a certified copy of the Judgment. Stamps were called for on August 5, 1964, and they were deposited on August 6, 1964 and the copy was ready on August 12, 1964. The time taken by the Court for furnishing the copy to the Petitioner was about 110 days. The Petitioner filed an application in the said Court for leave to appeal to this Court. The said application was dismissed on September 14, 1964. Before the dismissal of the said application the petitioner obtained the copy of the judgment. Thereafter on January 14, 1965 the petitioners filed Special Leave Petition (Criminal No. 169 of 1965 in this Court for Special Leave to Appeal to this Court against the judgment of the High Court. As the time for preferring an appeal against the said order of the High Court to this Court is 60 days from the date of the order refusing to give leave to appeal, the petition for special leave is time barred by 52 days. Hence the present

application for excusing the delay.

2. Mr. T. V. Sharma, learned counsel for the petitioner, raised before us two points, namely, (i) there was no delay at all in filing the petition for special leave as his client was entitled to exclude the time required for obtaining the copy of the judgment appealed from and that if the time be excluded, the present petition for special leave would be within time; and (ii) there is sufficient cause for excusing the delay.

3. At the outset it will be convenient to notice the relevant provisions of the Limitation Act and the Supreme Court Rules. Order XIII of the Supreme Court Rules prescribes a period of limitation for an appeal by special leave to this Court. Rule 1 thereof, before it was substituted by a new rule in 1964, read thus:

"A petition for special leave to appeal shall be lodged in the Court within sixty days from the date of the refusal of a certificate by the High Court or within ninety days from the date of the judgment sought to be appealed from whichever is longer:

Provided that-

(i) in computing the period of ninety days the time requisite for obtaining a certified copy of the judgment sought to be appealed from shall be excluded;

(ii) where the period of limitation claimed is sixty days from the date of the refusal of a certificate, the time taken subsequent to the date of refusal in obtaining a certified copy of the judgment (in cases where no certified copy of the judgment had been obtained prior to the date of such refusal) shall be excluded in computing the period of sixty days".

Under this rule an appellant who sought to take advantage of the alternative period of limitation could not exclude in computing the period of limitation the time taken by him for obtaining the certified copy of the judgment before the order of refusal of leave to appeal. He could only exclude such time taken for obtaining a copy of the judgment after the said refusal if he had not already obtained the same before such refusal. The Limitation Act of 1963 came into force on January 1, 1964. Thereunder specific period is prescribed under Art. 133 for filing appeals to this Court by special leave. Under that article in a case where leave to appeal was refused by the High Court, the period of limitation is sixty days from the date of the order of refusal, and in any other case the period of limitation is ninety from the date of the judgment or order. While under the Supreme Court Rules, two different periods of limitation were prescribed for filing a petition for special leave to appeal to this Court - one of 60 days from the date of the refusal of leave to appeal by the High

Court, and the other of 90 days from the date of judgment appealed from, whichever is longer - under Art. 133 of the Limitation Act, only one period of limitation is prescribed i.e. 60 days from the date of the order of refusal of leave to appeal by the High Court. By reason of Art. 145 of the Constitution of India, the statutory period of limitation prevails over the rule made by this Court. As the rule made by this Court was inconsistent with the statutory provision, that rule was deleted and a new rule was substituted to bring it in accord with the statutory provision. The substituted rule reads:

"Subject to the provisions of Ss. 4, 5, 12 and 14 of the Limitation Act, 1963 (36 of 1963) a petition for Special Leave to Appeal shall be lodged in the Court in a case where a certificate for leave to appeal was refused by the High Court within sixty days from the date of the order of refusal and in any other case within ninety days from the date of the judgment or order sought to be appealed from" The rule is only in substance a reproduction of the relevant provisions of the Limitation Act pertaining to the period of limitation prescribed for an appeal by special leave.

4. The question raised, therefore, falls to be decided on the relevant provisions of the Limitation Act. Under Art. 133(b) of the Limitation Act special leave to appeal to this Court in a case where leave to appeal was refused by the High Court can be filed only within 60 days from the date of the order of refusal. Under S. 12(2) thereof, in computing the period of limitation for an appeal or an application for leave to appeal, 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. It is argued that in terms of sub-section (2), of S. 12 of the Limitation Act in computing the period of limitation for special leave to appeal to this Court the time requisite for obtaining the copy of the order appealed from shall be excluded and that this view gets support from the fact that this Court in making the new rule omitted the aforesaid provisos. The omission of the provisos has no bearing on the question to be decided. This Court only substituted a new rule in terms of the provisions of the Limitation Act for the rules cannot be inconsistent with the statute. The substituted rule does not serve any other purpose. Now, coming in sub-section (2) of S. 12 of the Limitation Act, the object of the said sub-section 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 period. If time taken for obtaining a copy of the order before the commencement of the period of limitation could be excluded, on the parity 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 be 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 phraseology used in sub-section (2) of S. 12 of the

Limitation Act carries out that 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.

5. Coming to the next contention, we are clearly of the opinion that the petitioner had not made out any case for excusing the delay. The only reason he gives in his application for excusing delay is that he thought that the time in obtaining the certified copy of the order refusing leave to appeal to the Supreme Court will be counted for the purpose of calculating the period of limitation for filing the special leave petition, as he was wrongly informed of the practice of this Court. The Limitation Act of 1963 came into existence on October 5, 1963. It was more than a year since the Act was passed when the petition was filed in this Court. The vague allegation in the affidavit that the petitioner was wrongly informed of the period of limitation cannot possibly be a ground for excusing the delay. We cannot, therefore, find sufficient reason for excusing the delay in filing the special leave petition.

6. In the result, the Special Leave Petition is dismissed as out of time.

Petition dismissed