Lala Balmukund (Dead) Through L. Rs.

Vs

Lajwanti and Others

Civil Appeal No. 130 of 1968

(Y. V. Chandrachud R. S. Sarkaria, A. C. Gupta JJ)

01.04.1975

JUDGMENT

SARKARIA, J. -

1. This appeal by special leave directed against a judgment of the Allahabad High Court raises a question in regard to the interpretation of Section 12(2) of the Limitation Act, 1908. It arises out of these circumstances.

2. Roshan Lal and two others filed a suit in the Court of Munsif Havali, Lucknow, against Balmukund and another for dissolution of partnership, rendition of accounts and recovery. The suit was finally heard and decided by the Munsif as per his judgment, dated October 30, 1956, in these terms :

> Defendant No. 1 Lala Balmukund shall pay a total sum of Rs. 15,927/2/- to the plaintiffs in which they have equal shares. Plaintiffs shall also get their costs from defendant No. 1. Let a final decree be prepared accordingly provided necessary court-fee is paid by the plaintiffs within one month.
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> The plaintiffs did not pay the court-fee within the time originally fixed in the judgment. They asked for extension of time which was granted without notice of the other side. The plaintiffs then deposited the necessary court-fee within this extended time, on January 18, 1957. About 12 days thereafter, on January 30, 1957, the final decree was drawn up and signed.

3. The appellant (defendant No. 1) made an application for obtaining a copy of the judgment on November 14, 1956. The copy was prepared and delivered to the appellant on November 16, 1956. On November 26, 1956, i.e. about two months before the decree was actually drawn up and signed, the appellant made an application for a copy of the decree. The copy was prepared and delivered to Counsel for the appellant on February 1, 1957. Information about the supply of this copy was received by the appellant at Delhi on February 3, 1957.

4. Against the judgment and decree of the Munsif, the defendant filed an appeal on February 12, 1957, before the Additional Civil Judge, Lucknow. Along with the memorandum of appeal, he submitted an application under Section 5 of the Limitation Act, for condonation of delay in respect of the period from February 6, 1957 to February 12, 1957. By his judgment dated February 14, 1957, the Judge dismissed the appeal as time-barred.

5. Aggrieved, the defendant preferred a second appeal to the High Court.

6. Before the learned Single Judge of the High Court, the appellant urged : (1) That, the first appellate Court did not properly exercise its discretion when it held that there was no sufficient cause for condoning the delay; (2)(a) That as the decree passed was conditional on payment of court-fee, the date when the decree was actually signed should be the date of the decree; (b) That as the decree was prepared late, it should be held that the "time requisite" for obtaining a copy of the decree" was not the only time while the application for a copy of the decree remained pending but also the time prior to it.

7. The learned Judge rejected both these contentions. Following the rule in Keshar Sugar Works, Bombay v. R. C. Sharma (AIR 1951 All 122 (FB)), he held that the period between the date of the judgment (October 30, 1956) and the date (November 26, 1956) of making the application for copy could not be excluded as "time requisite for obtaining a copy of the decree" under Section 12(2) of the Limitation Act. In the result he dismissed the appeal as barred by limitation. Hence this appeal.

8. The contentions which were canvassed on behalf of the appellant in the High Court, have been reagitated before us by Shri R. K. Garg.

9. Firstly, it is urged that the Additional Civil Judge had exercised his discretion under Section 5 of the Limitation Act in a grossly unjust and unreasonable manner in not condoning the delay. It is submitted that apart from the sworn statement of the appellant that he was ill, there were patent circumstances in this case which by themselves constituted a sufficient cause for condoning the delay of six days in filing the appeal. It is stressed that the law on the point was anything but clear, and the delay in applying for a copy of the decree was due to the delay in preparation of the decree, which in turns, was attributable mainly to the default of the plaintiffs-respondents in not furnishing the court-fee within the time specified in the judgment.

10. It is to be noted that in the courts below the appellant did not take up the plea that the delay was due to wrong advice of the apprehension of law. The case then set up by him was that being a patient of heart disease he remained confined, under medical advice, to bed. He was fit enough to travel on February 10, but for want of funds, he could not reach Lucknow from Delhi on February 11. He produced a post-dated medical certificate, but did not examine the doctor concerned. The appellant had an adult son who used to look after the case. In these circumstances, it could not be said that the first appellate Court exercised its discretionary power perversely or illegally so as to warrant interference by the High Court in second appeal. We therefore, negative the first contention.

11. Next it is contended that the entire period between the date of the judgment and the signing of the decree, in the circumstances of this case, was the "time requisite" for obtaining a copy of the decree and should have been excluded, as such under Section 12(2) of the Limitation Act, 1908. According to the learned Counsel, the Allahabad High Court has wrongly interpreted the provisions of Section 12(2); while the contrary view taken by the other High Courts is correct.

12. As against this, Mr. Goyal, the learned Counsel for the respondent takes his stand on the reasoning and ratio of the Full Bench decision of the Allahabad High Court in Keshar Sugar Mills case (supra).

13. The material part of Section 12(2) runs thus :

> In computing the period of limitation for an appeal . . . the day on which the

> judgment complained of was pronounced and the time requisite for obtaining a copy of the decree . . . of order appealed from . . . shall be excluded. (emphasis supplied)

14. There is a conflict of opinion as to the meaning and scope of the phrase "time requisite for obtaining a copy of the decree or order". This conflict has arisen because the phrase in question is susceptible of a restricted as well as a liberal interpretation. On a narrow-gauge view, the "time requisite" spoken of in this phrase is to be strictly confined to the period commencing with the date of making the application for copy and ending with the date of the grant of the copy irrespective of whether the decree or order, copy of which is sought, is or is not in existence. This view has found favour with the Allahabad High Court. It was first propounded by Mahmood, J. in Bechi v. Ahson Ullah Khan (ILR 12 All 461 (FB)), thus :

> The words "requisite" and "obtaining" as they occur in the context seem to me to assume that some definite step ancillary to the "obtaining", that is, acquisition, is not only intended to be taken but has already been taken . . . . The time requisite for "obtaining a copy of the decree" cannot refer to any period antecedent to the appellant's asking for a copy by the usual mode of applying therefor, or to any period subsequent to its being ready for delivery.

The ratio of Bechi's case (supra) has been reaffirmed by Malik C.J., speaking for the majority in Keshar Sugar Works, Bombay v. R. C. Sharma (supra), with this observation :

> . . . the words "requisite" and "obtaining" mean that some definite step should be taken by the applicant himself towards the attainment of the copy and it cannot be said that the time was required for obtaining a copy if the appellant has not applied for a copy thereof . . . the appellant is not required to wait till the decree is ready before he can file his application for a copy.

15. The basis of this view is that the process of 'obtaining a copy begins only when an application for it is made. Thus it places greater stress on the word 'obtaining' than on the expression 'time requisite'. It purports to ignore the delay in drawing up of the decree - the existence of which is a condition precedent to the obtainment of its copy - even where such delay is the result of circumstances beyond the control of the appellant.

16. The contrary view proceeds on a liberal interpretation of the language of Section 12(2). It places due emphasis on the expression "time requisite" and gives it full effect, which, according to it, is not restricted to the time actually taken, but is wide enough to encompass all the time properly required. Consequently, the time properly taken for the preparation of the decree and the time which properly elapses in the circumstances of a particular case between the pronouncement of the judgment and the signing of the decree, should also be excluded as the time necessary for obtaining its copy. The action on the part of the appellant in applying for a copy of the decree is not always a decisive factor in considering whether any time should be so excluded. In a case where various steps might have to be taken by the parties before a decree could be ready and signed, the Court would have to consider whether any of the time-taken for preparation of the decree could be attributed to the fault or negligence of the appellant. If any of the time could be so attributed, then that time could not be excluded under Section 12(2). This, in substance, is the view adopted by the High Courts of Bombay (Jaya Shankar Maluhshankar v. Mayabhai, AIR 1955 Bom 122 (FB)), Calcutta (Bani Madhub Mitter v. Matangi Dassi, ILR 13 Cal 104; Secretary of State v. Parijit Debi, AIR 1932 Cal 331), Patna (Gabriel Christian v. Chandra Mohan Missir, ILR 15 Pat 284), Nagpur (Bhagwant v.

Liquidator, Co-operative Society Sarphapur, ILR 1955 Nag 791 (FB)) and Assam (Arun Chand Swami v. Mohd. Mujib Choudhary, AIR 1955 Ass 129 (SB)).

17. The leading case wherein this view was first enunciated is Beni Madhub Mitter v. Matangini (supra). In Pramatha Nath v. W. A. Lee (AIR 1922 PC 452), the Privy Council referred to Beni Madhub's case in terms which could be indicative of an implied approval of its ratio decidendi. The Judicial Committee distinguished Beni Madhub's case on the ground that the appellant therein was not at fault at all and all that Beni Madhub's case had decided was that the two periods of time,

One of which was prompt and effective and the other of which the appellant might not have been able to control, ought to be deducted from the length of time between the decree and the lodging of the memorandum.

In their Lordships' opinion, the real test was whether the party was responsible for the delay in preparation of the decree or order, or the delay was unavoidable, and due to circumstances beyond the control of the appellant. The conduct of the appellant was considered to be a material factor in determining the time requisite for obtaining a copy of the order. In computing such time requisite, the benefit of any period which elapsed due to circumstances beyond the appellant's control had to be given to him. But any time which lapsed on account of his default should not be so excluded.

18. In Jiji Bhoy N. Surty v. T. S. Chettyar Firm (55 IA 16 : AIR 1928 PC 103), the Judicial Committee held that the word 'requisite' in Section 12(2) means 'properly required' and implies that no part of the delay beyond the prescribed period was due to the appellant's default.

19. We do not wish to encumber this judgment with a detailed discussion of all the citations and the reasoning advanced therein in support of one or the other view. It will be sufficient to say that upon the language of Section 12(2) both the constructions are possible, but the one adopted by the majority of the courts, appears to be more consistent with justice and good sense. The Limitation Act deprives or restricts the right of an aggrieved person to have recourse to legal remedy, and where its language is ambiguous, that construction should be preferred which preserves such remedy to the one which bars or defeats it. A court ought to avoid an interpretation upon a statute of limitation by implication or inference as may have a penalising effect unless it is driven to do so by the irresistible force of the language employed by the Legislature.

20. Considered in the light of this cardinal canon, we are not persuaded to accept the Allahabad view. Although there is nothing in the Limitation Act or the Code of Civil Procedure requiring that the application for a copy of the decree or order should be made within the ordinary period of limitation, this view reads such a peremptory requirement into the statute and makes it a terminus a quo of the time necessary for obtaining a copy of the decree even if such a decree did not or could not come into existence within the prescribed period, due to circumstances beyond the control of the appellant. It puts undue emphasis on the starting point of the process of obtainment of a copy by synchronising it with the date of applying, whereas the emphasis should have been on the final act of obtaining the copy. It unnecessarily whittles down the amplitude of the word "for" (immediately preceding the expression "obtaining") as if it was "in", whereas in the context it appears to carry a wider connotation, equivalent to "in respect of", indicating that the scope of the expressing "time requisite" and "obtaining" (in association with which it occurs) is not necessarily confined to the activity of the appellant, but is relatable to the circumstances of the case, beyond the control of the appellant. The Allahabad view overlooks the stark truth that if a party applies for a copy of a decree not yet in existence, he cannot be said to be 'obtaining' the copy during the period the original was

yet to be prepared and which for some reason, not of the party's making, could not be brought into existence. To hold that in such a case, also, he was 'obtaining' a copy of the non-existent original, would be conjuring up a new fiction over and above that envisaged by Order 20, Rule 7 of the Code of Civil Procedure. In short, this construction constricts the scope of the phrase "the time requisite for obtaining a copy of the decree or order", so as to have an unduly penal effect. We would therefore, eschew this construction and approve the other adopted by most of the High Courts.

21. In our opinion, the expression "time requisite" in the phrase in question, means all the time counted from the date of the pronouncement of the judgment (the same being under Order 20, Rule 7, C.P.C., the date of the decree) which would be properly required for getting a copy of the decree, including the time which must ex necessitas elapse in the circumstances of the particular case, before a decree is drawn up and signed. If any period of the delay in preparing the decree was attributable to the default or negligence of the appellant, the latter shall not be entitled to the exclusion of such period under Section 12(2) of the Limitation Act, 1908.

22. Applying the law as enunciated above to the facts of the case in hand, it will be seen that the drawing up or coming into existence of the original decree, of which the copy was sought, was conditional upon the payment of court-fee by the plaintiffs within thirty days of the pronouncement of the judgment (October 30, 1956). The plaintiffs did not comply with that direction within the time originally specified in the judgment. They deposited the court-fee only on January 18, 1957 within the extended time which was granted without notice to the defendant-appellant. Even after that, the decree was not signed till January 30, 1957. Under the judgment or any rules of the court, the appellant was not required to take any step towards the preparation of the decree. No period of the delay in drawing up the decree was attributable to the fault of the appellant. The delay was mainly due to the delayed deposit of the court-fee by the plaintiffs and partly due to the laxity of the office of the court. Although the appellant prematurely filed an application for getting a copy of the non-existent decree on November 26, 1956, he could legitimately defer that action till the condition precedent on which the drawing up of the decree was dependent, was performed by the plaintiffs. It would not have been extravagant for the appellant to wait till the court-fee was deposited by the plaintiffs, for, in the event of non-deposit of the court-fee, there was a reasonable possibility of their suit being dismissed, or at any rate, of the decree against which the defendant felt aggrieved and eventually appealed, not being passed. Under the circumstances, the appellant was entitled to the exclusion of the entire time between the date of the pronouncement of the judgment and the date of signing of the decree, as the 'time requisite for obtaining a copy of the decree'. After such exclusion - avoiding double counting - his appeal filed in the court of the Additional Civil Judge on February 12, 1957, was fully within time.

23. Before parting with this judgment we may mention that Mr. Goyal, learned Counsel for the respondents had also pointed out that in view of the Explanation appended to the re-enacted Section 12 of the Limitation Act, 1963, the Allahabad view is the correct one and the contrary opinion held by the other High Courts is no longer good law. In this connection he had cited Sitaram Dada Sawant v. Ramu Dada Sawant (AIR 1968 Bom 204).

24. We would dispose of this contention on the short ground that in the present case we are concerned with the interpretation of Section 12 as it stood in the Limitation Act of 1908. We are not called upon to consider the construction of the new Section 12 of the Limitation Act, 1963. No part of the new Section 12 has been given retrospective effect. We therefore, express no opinion as to whether the law enunciated above will hold good in cases governed by the new Section 12 of the 1963 Act.

25. For the foregoing reasons, we set aside the judgment of the High Court and allow this appeal with costs throughout. The case shall now go back to the Additional Civil Judge, Lucknow for disposal of the appeal in accordance with law.

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