

Santimay Dey

Vs

Suraiya Properties (Pvt.) Ltd. and Others

Civil Appeal No. 872 of 1977

(CJI Y. V. Chandrachud, D. A. Desai, R. S. Pathak JJ)

15.03.1978

JUDGMENT

CHANDRACHUD, C.J. -

1. On August 16, 1958 the State of West Bengal requisitioned Block 'N' in a three-storied building situated at No. 153/3, Upper Circular Road, Calcutta. The Block was allotted to the appellant's brother but on his transfer from Calcutta, it was allotted to the appellant on April 1, 1965. Respondent 1, Suraiya Properties Private Ltd., who are the owners of the building, thereupon filed a suit to challenge the requisition and allotment. That suit having been dismissed in May 1965, they filed a writ petition to challenge the validity of the requisition. By a judgment dated July 17, 1973 a learned Single Judge, of the Calcutta High Court upheld the order of requisition but quashed the order of allotment in favour of the appellant. On the very next day, that is, on July 18, 1973, the appellant applied for a certified copy of the judgment. He obtained the certified copy on May 31, 1975 and filed Letters Patent Appeal 164 of 1975 against the judgment of the Single Judge on June 10, 1975.
2. When the appeal came up for hearing, an objection was raised on behalf of respondent 1 that the appeal was barred by limitation since the appellant was not, for the purpose of reckoning the period of limitation, entitled to the exclusion of the entire period between July 18, 1973 and May 31, 1975. That contention was upheld and the appeal was dismissed on the ground that it was barred by limitation. Being aggrieved by the judgment of the Division Bench dated November 27, 1975, the appellant has filed this appeal by special leave.
3. The Calcutta High Court has held in the Letters Patent Appeal that in the matter of obtaining certified copies of orders on the Original Side of the High Court, a certain procedure is established over the years and that the appellant had failed to follow that procedure. The procedure referred to by the learned Judges has been noticed in an unreported judgment given by Chakravarti, C.J. in *Prativa Bali Mitra v. Gour Lal Mitra* (Appeal from Original Order No. 160 of 1957). The learned Chief Justice has observed therein that a practice had grown up on the Original Side of the Calcutta High Court, which was a practice of a very long standing, that immediately after a decree or order is filed with the filing department, the party which has put in a requisition for a certified copy has to inform the copying department of the fact of filing the decree or order and it is only thereafter that the copying department proceeds to prepare the certified copy. Since in the instant case the appellant did not follow this practice, it was held that he was not entitled to the exclusion of the entire period from the date on which he applied for the certified copy of the judgment and the date on which the certified copy was ready for delivery.

4. Granting that the procedure of the kind described by the High Court in its judgment is of a long standing and is widely known, we are of the opinion that due allowance should have been made in the instant case for the fact that the appellant was conducting his litigation in person until the Letters Patent Appeal was filed. The knowledge of the unreported judgment in which the practice of the High Court is noticed may not easily be attributed to the appellant. Besides, as held by this Court in *Chandra Bhushan v. Deputy Director of Consolidation (Original) U.P.* ((1967) 2 SCR 286 : AIR 1967 SC 1272 : 1967 ALJ 264) a rule of practice cannot be exalted into a rule of limitation because a rule of practice can only indicate how discretion should be exercised by the Court in determining whether, having regard to the circumstances of the case, the party concerned has been guilty of laches or undue delay. In other words, by treating a rule of practice as a rule of limitation, the Court cannot reject a petition for condonation of delay without considering whether in fact the petitioner is guilty of laches or undue delay.

5. The High Court not having examined the question of delay independently of the practice stated to be prevailing on its Original Side, we have considered that question for ourselves and are of the opinion that the appellant cannot be said to be guilty of laches or undue delay in filing the Letters Patent Appeal. Accordingly, we allow this appeal, set aside the judgment of the High Court and remand the appeal back to it for disposal on merits.

6. Mr. Amlan Ghosh, appearing for respondent 1, contends that the premises have already been derequisitioned by the Government of West Bengal and, therefore, the appellant has no locus standi to prosecute the appeal. This appeal was adjourned more than once for enabling the learned Counsel to produce the order of derequisition. Earlier respondent 1 had applied for revocation of the Special Leave granted to the appellant contending that in view of the order of derequisition the appellant was not entitled to prosecute the appeal and that the appellant had suppressed the fact of derequisition from the Court while obtaining Special Leave. Since respondent 1 was unable to produce the order of derequisition, the petition for revocation of Special Leave was adjourned. The appeal was itself thereafter adjourned to enable respondent 1 to produce the order of derequisition but he has not been able to do so. We cannot, therefore, accept Shri Ghosh's contention. We would, however, give him liberty to satisfy the High Court that the premises have been derequisitioned. The stay granted by this Court will continue until further orders of the High Court. There will be no order as to costs.

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