

Suraj Bhan and Others

Vs

Bharat Singh and Others

Civil Appeal No. 770 of 1980

(M. H. Kania, S. Ranganathan JJ)

04.10.1989

JUDGMENT

KANIA, J. –

1. This is an application (C.M.P. No. 9031 of 1989) made by the respondents in the aforesaid Civil Appeal No. 770 of 1980 for revocation of the special leave granted under Article 136 of the Constitution pursuant to which the above civil appeal as been filed.

2. The respondents to this application are the appellants in the aforesaid Civil Appeal No. 770 of 1980 and we propose to refer to them as such. The appellants were defendants 3 and 4 in Suit No. 196 of 1963 in the Court of Senior Sub-Judge, First Class, Delhi. The said suit was filed praying for a declaration that certain shops belonged to the plaintiffs and defendant 5 in that suit who are respondents in the aforesaid appeal before us. The appellants had raised a contention in the suit that the suit was barred by the law of limitation and that contention was upheld by the trial court. In view of the conclusion of the trial court regarding the question of limitation, the trial court dismissed the suit as barred by limitation. On an appeal to the High Court at Delhi, the High Court reversed the said finding and took the view that the suit was not barred by law of limitation. The High Court remanded the suit to the trial court to be tried on merits by the trial court. The trial court hearing the suit on remand decreed the same and the appeal filed by the appellants against the said judgment and decree of the trial court is pending in the High Court. It is against the decision of the High Court remanding the suit as aforesaid that the appeal before us has been preferred. In the special leave petition the appellants made an averment as follows :

"The petitioners filed SCA No. 9 of 1978 in the High Court, under Article 133, Constitution of India on August 22, 1977 within time, having regard to the time taken in obtaining certified copy of the judgment. The office raised certain formal objections and the application was returned to be filed again after removal of those defects. It was filed again on January 24, 1978 after compliance. However, it was dismissed on April 11, 1979 on the ground that it was not represented within a reasonable time."

3. The contents of this paragraph read in the relevant context convey that the appellants had filed an application under Article 133 of the Constitution to the High Court for granting leave to appeal against the decision of the High Court to this Court and that application was dismissed on April 11, 1979 on the ground that it was not represented within a reasonable time after the papers were taken back by the appellant for removing the office objections. In fact, the uncontroverted position is that on April 11, 1979 when the said application for certificate for leave to appeal to this Court came up

for hearing before the High Court a preliminary objection was raised that the application should not be entertained as it was hopelessly barred by time. It was pointed out by the High Court in its judgment on the application that three objections were raised by the Registry to the said application, by its noting made on August 23, 1977. The Registry directed the application to be returned to the appellants on August 24, 1977. The appellants did not bother to take back the papers or remove the objections raised by the Registry and finally took back the papers only after gross delay and refiled them on January 24, 1978. In view of this, the High Court upheld the preliminary objection to the effect that the application for the grant of certificate to leave to appeal to this Court should not be entertained as it was hopelessly barred by time. The application was thus dismissed on the ground of limitation. In the statement made in the special leave petition which we have already set out, it has nowhere been disclosed on the ground of limitation. This non-disclosure is material in view of the provisions of Order XVI Rule 1 of the Supreme Court Rules, 1966 to which we shall presently refer. It is true that the appellants had not presented again to the High Court the application for certificate of fitness for leave to appeal to this Court after removing all objections except after a gross delay. But the order clearly was to effect that the application for grant of certificate was grossly barred by time and hence was dismissed. We find that under Rule 1 of Order XVI of the aforesaid Rules it is provided that where the leave to appeal to this Court has been refused in a case by the High Court, a petition for leave to appeal to this Court shall, except in circumstances which are not relevant here, be lodged in this Court within 60 days from the date of the order of refusal and in any other case within 90 days from the date of the judgment or order sought to be appealed from. There is an Explanation to this rule which makes it clear that where an application for the grant of certificate of leave to appeal to this Court has been rejected on the ground of limitation or on the ground that the application was not maintainable, the order will not be treated as an order of refusal for the purposes of Rule 1 of the aforesaid order, with the result that in such a case the special leave petition should be filed within 90 days from the date of the judgment or order sought to be appealed from. In the present case the application for the grant of certificate was rejected on the ground of limitation and hence the special leave petition should have been filed within 90 days of the date of the judgment of the High Court, being May 24, 1977 excluding the time taken for obtaining a copy of the order. The special leave petition in this case was presented long after that time and there in no application for condonation of delay. The result is that special leave petition is hopelessly barred by limitation. The non-disclosure of the fact that the application for certificate for leave to appeal to this Court was refused as barred by limitation, was a material non-disclosure or suppression. It may be pointed out that the said leave was granted ex parte and without hearing the respondents so that there was no one present before the court to correct any statement made in the special leave petition. In the result, we revoke the leave to appeal granted by this Court as aforesaid.

4. The next point which we have to consider as to whether it will now be open to the appellants to raise the question of the correctness of the view taken by the High Court on the issue whether the suit was not barred by the law of limitation in case they are aggrieved by the decision of the High Court in the appeal from the decree passed in the suit as we have already pointed out. We are not called upon to decide that question at this stage. It will be for the High Court to decide that question according to law.

5. Civil miscellaneous petition is allowed and the appeal is dismissed with no order as to costs.

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