

State of W.B. and Others

Vs

Kartick Chandra Das and Others

Civil Appeal No. 9069 of 1996

(K. Ramaswamy, G. B. Pattanaik JJ)

06.05.1996

JUDGMENT

1. Leave granted.

2. We have heard learned counsel on both sides. The learned single Judge of the High Court of Calcutta exercising the power under Art. 226 of the Constitution in Civil Order No. 241(W) of 1992 directed the appellant to grant registration in terms of the West Bengal Cinemas Development Scheme, 1976 and to grant subsidy to the respondents as per the said scheme. The appellant had carried the matter in appeal against the said order in FMAT No.3244/92 with an application for stay of the operation of the order. We are informed that the appeal is pending. Pending appeal the respondent had taken out contempt proceedings against the appellant for non-enforcement of the direction issued by the learned single Judge. Against the contempt notice, the appellant have filed a Letter Patent Appeal to the Division Bench. The Division Bench in the impugned order dated November 4, 1994 passed the order as under :

"Having heard the learned counsel for the parties we are of the opinion that the delay in filing this appeal being not condonable as S.5 of the Limitation Act does not apply the appeal is dismissed. The application under the Limitation Act is also dismissed".

Thus this appeal by special leave.

3. It is not in dispute that under S.19 of the Contempt of Courts Act, an appeal would lie to the Division Bench and limitation of 30 days from the date of the order has been prescribed subject to the exclusion of the time taken for obtaining the certified copy thereof. We have sent that the appellate side rules of the Calcutta High Court applicable to the area other than the city of Calcutta had not expressly excluded the application of the limitation under the Limitation Act.

4. Learned counsel for the respondent sought to contend that by operation of Rule 3 of Chapter 8 of the appellate side rules under the Letters Patent the memorandum of appeal drawn up under Order 41, Rule 1, CPC requires to be complied with as envisaged thereunder since it had not been provided with any limitation. The Division Bench was, therefore, right in holding that the Limitation Act was not extended for an appeal filed under clause 15 of the Letters Patent against the order passed by the learned single Judge under the provisions of the Contempt of Courts Act. It is seen that under the Contempt of Courts Act, the High Court has framed the rules. Rule 35 envisages that :

"In respect of appeals from the orders of any Judge or Bench of the Original Side the

rules of the Original Side relating and in respect of appeals from the order of any Judge or Bench of the Appellate Side, the rules of the Appellate Side shall apply mutatis mutandis".

Therefore, for the appeals filed under CI.15 of the Letters Patent against the order of the learned single Judge for the contempt proceedings by necessary consequences, the procedure prescribed on the appellate side would also be applicable and followed.

5. Section 29 of the Limitation Act envisages 'Savings', Sub-Section (2) thereof reads thus :

"(2) Where any special or local law prescribes for any suit, appeal or application a period of limitation different from the period prescribed by the Schedule, the provisions of S.3 shall apply as if such period were the period prescribed by the Schedule and for the purpose of determining any period of limitation prescribed for any suit, appeal or application by any special or local law, the provisions contained in Ss.4 to 24 (inclusive) shall apply only insofar as, and to the extent to which, they are not expressly excluded by such special or local law".

6. In consequence, by operation of S.29(2) read with S.3 of the Limitation Act, limitation stands prescribed as a special law under S.19 of the Contempt of Court Act and limitation in filing Letters Patent Appeal stands attracted. In consequence, Ss.4 to 24 of the Limitation Act stands attracted to Letters Patent Appeal insofar as and to the extent to which they are not expressly excluded either by special or local law. Since the rules made on the appellate side, either for entertaining the appeals under clause 15 of the Letters Patent or appeal arising under the contempt of courts, had not expressly excluded, S.5 of the Limitation Act becomes applicable. We hold that S.5 of the Limitation Act does not apply to the appeals filed against the order of the learned single Judge for the enforcement by way of a contempt. The High Court, therefore, was not right in holding that S.5 of the Limitation Act does not apply. The delay stands condoned. Since the High Court had not dealt with the matter on merits, we decline to express any opinion on merits. The case stands remitted to the Division Bench for decision on merits.

7. The appeal is accordingly allowed. No costs. Appeal allowed.