

LAHORE HIGH COURT

Punjab Co-operative Bank Ltd

Vs

Official Liquidators

(Tek Chand, J.)

10.05.1940

JUDGMENT

Tek Chand, J.

1. The facts of the case, which has given rise to this reference, are as follows: Some years ago, on a petition under Section 166, Companies Act, presented by a creditor of the Punjab Cotton Press Co. Ltd., the High Court ordered that the company be compulsorily' wound up. The proceedings in the winding up are being taken before a Single Bench of the Court. In the course of these proceedings three orders were passed on 22nd June 1989, 3rd July 1989 and 12th July 1989 respectively.

2. On 2nd August 1989, an appeal from these orders was preferred by the Punjab Cooperative Bank Ltd. (which is one of the creditors of the company in liquidation) under Clause 10, Letters Patent, read with Section 202, Companies Act. In the memorandum of appeal, it was stated that excluding the time spent in obtaining certified copies of the orders appealed against, the appeal was within limitation. It appears that an application for copies of the orders was made by the appellant bank on 22nd June 1939. The copies were completed by the copyists on 18th July and were certified by the examiner on 19th July 1939. The "time requisite" for obtaining the copies was therefore 28 days. When the appeal came up for hearing before a Division Bench of this Court, a preliminary objection was raised on behalf of the official liquidator of the Punjab Cotton Press that the appeal was time-barred.

3. In support of this objection, reliance was placed upon Rule 4 of Chap. 1A of Vol. 5 of the Rules and Orders and a Pull Bench decision of this Court in *Jog Dhian v. Hussain*¹ Rule & lays down that no memorandum of appeal preferred under Clause 10, Letters Patent, shall be entertained if presented after the expiration of 30 days from the date of the judgment appealed from, unless the admitting Bench in its discretion, for good cause shown, grants further time. Such memorandum of appeal need not be accompanied by a copy of the decree, order or judgment appealed from....

4. It was pointed out that no prayer had been made by the appellant bank to the admitting Bench to extend time and no such extension had, in fact, been granted, and that as it was not necessary for the appellant to file with the memorandum of appeal copies of the orders appealed from, the

appellant was not entitled to exclude the days

¹ A.I.R. 1935 Lah. 328

spent in obtaining these copies, as laid down by the Full Bench in the case cited. In reply, the appellant's counsel contended that this being an appeal from orders passed in the exercise of the original jurisdiction of the High Court, the period of limitation is 20 days from the date of each order appealed from, as provided in Article 151, Limitation Act, which is subject to Section 12 of that Act and therefore the appellant was entitled, as of right, to deduct the "time requisite" for obtaining the copies.

5. He admitted that under the rules it was not necessary to file with the memorandum of appeal copies of the orders appealed from; he also admitted that the Full Bench in *Jog Dhian v. Hussain* A.I.R. 1935 Lah. 328(*supra*) had ruled that in such cases the time spent in obtaining copies could not be deducted, but he maintained that that ruling was contrary' to the decision of their Lordships of the Privy Council in *J.N. Surty v. T.S. Chettyar Firm*² which had been decided seven years earlier but to which the attention of the Full Bench, apparently, was not drawn.

6. The learned Judges of the Division Bench, while noticing that in *Jog Dhian v. Hussain*³ the appeal was from the judgment of a Single Judge passed on appeal from an appellate decree-of a subordinate Court, whereas the appeal in the present case is from orders passed by the High Court in the exercise of its original jurisdiction observed that the ratio decidendi of the Full Bench ruling applied equally to both kinds of appeals and that in view of the pronouncement, of their Lordships in the case cited above, the matter required reconsideration by a larger Bench. Accordingly, they referred the following two questions for decision by a Bench, of five Judges; and this Bench has been constituted to pronounce its opinion thereon:

(1) Does Section 12, Limitation Act, govern an appeal preferred under Section 202, Companies Act, from an order of a single Judge exercising original jurisdiction where the forum of appeal (as distinct from the right of appeal) is provided by the Letters Patent; and if so, is the appellant in such cases entitled to exclude the "time requisite" for obtaining a copy of the judgment appealed against, even though under the rules and orders of the High Court no copy of the judgment is required to be filed with the memorandum of appeal?

(2) Does Section 12, Limitation Act, govern appeals under the Letters Patent in which not only the forum of appeal, but also the right of appeal is given by the Letters Patent; and is the appellant in such a case entitled to exclude under Section 12 the "time requisite" for obtaining a copy, whether such Copy is filed or not?

7. It may be stated at the outset that the case before us is of the type described in the first of these questions. As stated already, the orders appealed from were passed by a Single Bench of this Court in the course of the winding up of the Punjab Cotton Press Co., Ltd. From such orders an appeal is provided by Section 202, Companies Act, which reads as follows:

...appeals from any order or decision made, or given, in the matter of the winding up of a company by the Court may be had in the same manner, and

² A.I.R. 1928 P.C. 103

subject to the same conditions, in and subject to which, appeals may be had from any order or decision of the same Court in cases within its ordinary jurisdiction.

8. It will be noticed that this section, while giving the aggrieved party the right of appeal against orders passed in winding up, contains no specific provisions for the forum in which the appeal is to be preferred; nor does it prescribe any particular period of limitation for such appeals. It lays down, in general terms, that for such purposes the orders passed in the matter of the winding up shall be treated as if they had been passed by the same Court in cases within its ordinary jurisdiction. In determining the forum, and the conditions on which appeals from such orders lie, we have therefore to look outside the Companies Act.

9. Thus, if the order is passed by a District Court, to which the proceedings in the winding up have been transferred under Section 164 of the Act, the appeal would lie to the High Court under Section 39, Punjab Courts Act, and the period of limitation would be 90 days from the date of the order, as prescribed in Article 156, Limitation Act, if, however, the winding up is proceedings before a Single Bench of the High Court in the exercise of its original jurisdiction the forum of appeal would be a Bench of two or more Judges of the High Court under Clause 10, Letters Patent, and the limitation for such appeals is 20 days as laid down in Article 151, Limitation Act. But if the matter is being dealt with by a Bench of two or more Judges of the High Court, no appeal would lie from the order of such a Bench to any Court in India, but the aggrieved party may appeal to His Majesty-in-Council in the manner and subject to the conditions laid down in Section 109, Civil Procedure Code, or Clause 29, Letters Patent, and in such a case the application for leave to appeal must be made within 90 days of the order (Article 179). It is clear, that the present case falls within the second of these classes. The order under appeal had been passed by a Single Bench of this Court in the exercise of its original jurisdiction and therefore the case is governed by Article 151.

10. But by virtue of Section 3 of the Act, that article, like all other articles in the Schedule, is subject (inter alia) to the provisions of Section 12. Sub-section (2) of that section lays down that in computing the period of limitation prescribed for an appeal, an application for leave to appeal, and an application for a review of judgment, 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 reviewed, shall be excluded.

11. The combined effect of these provisions therefore is that the appellant is entitled, as of right, to exclude the period taken in obtaining the copies which, as stated above, is 28 days in this case. It is conceded, that if this period is deducted the appeal from each of the three orders appealed from is within time. It was however argued that as in an appeal from the order of a Single Bench to a Bench of two or more Judges of this Court, the appellant is not required to file copies of the orders appealed from, the time spent in obtaining such copies cannot be said to be "time requisite" within the meaning of Section 12. This question had been the subject of controversy in the Courts in India for a long time and divergent opinions had been expressed by different High Courts.

12. The matter however was set at rest by the Judicial Committee of the Privy Council in *J.N.*

Surty v. T.S. Chettyar Firm A.I.R. 1928 P.C. 103(supra) where their Lordships overruled the decision of the Rangoon High Court in *J.N. Surty v. T.S. Chettyar Firm*⁴ in which it had been held that no period of time can be regarded as "requisite" within the meaning of Section 12(2) if it is not essentially necessary to obtain a certified copy of the decree for the purposes of the appeal, and an appellant, who so chooses to obtain a copy, cannot claim to exclude from the period of limitation the time spent in obtaining it. Their Lordships held that this view could not be supported by the plain wording of the sub-section. After reviewing the course of decisions in India Lord Phillimore, who delivered the judgment of the Judicial Committee observed as follows:

Their Lordships have now to return to the grammatical construction of the Act, and they find plain words directing that the time requisite for obtaining the two documents is to be excluded from computation. Section 12 makes no reference to the Code of Civil Procedure or to any other Act. It does not say why the time is to be excluded but simply enacts it as a positive direction. If, indeed, it could be shown that in some particular class of cases there could be no object in obtaining the two documents, an argument might be offered that no time could be requisite for obtaining something not requisite. But this is not so. The decree may be complicated, and it may be open to draw it up in two different ways, and the practitioner may well want to see its form before attacking it by his memorandum of appeal. As to the judgment, no doubt when the case does not come from up-country, the practitioner will have heard it delivered, but he may not carry all the points of along judgment in his memory, and as Sir John Edge Bays in *Wajid Ali Shah v. Nawal Kishore*⁵ the Legislature may not wish him to hurry to make a decision till he has well considered it. There is force, no doubt, in the observation made in the High Court that the elimination of the requirement to obtain copies of the documents was part of an effort to combat the dilatoriness of some Indian practitioners; and their Lordships would be unwilling to discourage any such effort. All however that can be done as the law stands, is for the High Courts to be strict in applying the provision of exclusion.

The word "requisite," is a strong word; it may be regarded as meaning something more than the word required. It means "properly required," and it throws upon the pleader or counsel for the appellant the necessity of showing that no part of the delay beyond the prescribed period is due to his default. But for that time which is taken up...in drawing up the decree or by the officials of the Court in preparing and issuing the two documents, he is not responsible.

13. After this clear pronouncement of their Lordships, it can no longer be maintained that in appeals governed by Article 151 or other Article of Schedule 1, to which Section 12, Limitation Act, applies, the appellant is not entitled to the benefit of

⁴ A.I.R. 1927 Rang. 20

⁵(95) 17 All. 213

Section 12 in cases in which it is not necessary to file copies of the judgment, decree or order appealed from. To this extent therefore *Dyal Singh v. Budha Singh*⁶ and the other cases of this Court in which this has been laid down must be taken to have been overruled. The

judgment of their Lordships in *J.N. Surty v. T.S. Chettyar Firm A.I.R. 1928 P.C. 103(Supra)* was delivered in 1928. Seven years later, in 1985, the question was raised before a Full Bench of this Court in *Jog Dhian v. Hussain A.I.R. 1935 Lah. 328(Supra)*, on an appeal under Clause 10, Letters Patent, from an appellate judgment of a Judge sitting in Single Bench, when the appellant claimed exclusion of the time taken in obtaining copies under Section 12.

14. The learned Judges, composing the Full Bench, held that the exclusion claimed could not be given for two reasons: (1) because Section 12 did not govern Letters Patent appeals from the appellate judgments of a Single Bench of the High Court as the period of limitation for such appeals was not prescribed in the Schedule of the Act, and Section 29 of the Act did not extend that section to appeals under the Letters Patent, and (2) because under the rules it was not necessary to file with the memorandum of appeal a copy of the judgment appealed against and therefore the time spent in obtaining the copy of the order under appeal was not "time requisite" within Section 12.

15. In support of both these propositions, the learned Judges cited with approval *Dyal Singh v. Budha Singh A.I.R. 1921 Lah. 26(Supra)*, which they followed. It appears that the attention of the learned Judges was not drawn to the decision of their Lordships of the Privy Council in *J.N. Surty v. T.S. Chettyar Firm A.I.R. 1928 P.C. 103(Supra)*, according to which the second of the reasons given in support of the conclusion of the Full Bench could no longer hold good. It must therefore be held that the decision in *Jog Dhian v. Hussain A.I.R. 1935 Lah. 328(supra)* is not correct in so far as it purported to lay down, in broad terms, that the "time requisite" for obtaining a copy of the judgment appealed from, which under the rules of the High Court need not be filed with the memorandum of appeal, cannot be excluded for the purposes of limitation in the case of appeals under the Letters Patent. As has been stated above, appeals from the orders passed by the High Court in the exercise of its original jurisdiction are governed by Article 151, which is subject to Section 12, and therefore the appellant is entitled, as of right, to deduct the time requisite for obtaining copies.

16. I would accordingly answer the first question in the affirmative. The second question deals with cases in which not only the forum of appeal, but also the right of appeal is given by the Letters Patent and not by any other enactment. This question covers two different classes of cases: (a) where the judgment under appeal was passed by the High Court in the exercise of its extraordinary original civil jurisdiction, i.e., when a suit had been removed by the Court from a subordinate Court and had been tried and determined by it under Clause 9, Letters Patent, and the right of appeal as well as the forum is provided for in Clause 10; or (b) where the judgment had been passed in the exercise of the appellate jurisdiction of the High Court on appeal from an original or an appellate decree or order of a subordinate Court.

⁶ A.I.R. 1921 Lah. 26

17. So far as cases falling within class (a) are concerned, the answer to the question is simple. Such cases are obviously governed by Article 151, Limitation Act, which prescribes the period of time within which appeals from decisions or orders passed by any of the High Courts mentioned therein in the exercise of its original jurisdiction, must be preferred. It will be seen that this article is governed in its terms and applies equally to all appeals from decrees or orders passed by the High Court in the exercise of its original jurisdiction, whether ordinary, or extraordinary, or specially conferred by a statute to try and determine particular types of cases,

(e.g., matrimonial, insolvency, company, etc.). This being so, and as shown above Article 151 being subject to Section 12, the "time requisite" for obtaining the copies must be excluded in appeals described in class (a) above.

18. In cases falling in class (b), the appeal is from the judgment of the High Court passed on its appellate jurisdiction. Schedule 1, Limitation Act, does not contain any, provision dealing with them, but for such appeals the period of limitation is provided in Rule 4 of the rules, framed by the High Court under Clause 27, Letters Patent, and is 30 days from the date of the judgment appealed from. Section 3, Limitation Act, in terms, extends the operation of Section 12 only to those cases in which the period of appeal is provided in Schedule 1 of the Act, and is, therefore, of no assistance. But by Section 29, Limitation Act (as amended by Act 10 of 1922) the provisions of certain sections, including Section 12, have been made applicable to special and local laws for the purpose of determining the period of limitation prescribed for any...appeal...by any such local or special law...in so far as, and to the extent to which, they are not expressly excluded by such special or local law.

19. The question for consideration, therefore, is whether the Letters Patent and the rules framed there under by the High Court are a "special law" within the meaning of Section 29. If the answer to this question is in the affirmative, Section 12 will be applicable; if it is in the negative, that section will not apply. The Full Bench in *Jog Dhian v. Hussain A.I.R. 1935 Lah. 328(Supra)* has held that this is not a "special law" and in doing so it followed an obiter dictum of Cunliffe, J. of the Rangoon High Court in *Abdul Ganny v. I.M. Russell A.I.R. 1930 Rang*, where the learned Judge observed:

The question, therefore, seems to me whether the rules made by a High Court under its Letters Patent and by virtue of the Code of Civil Procedure amount to a special or local law. In my opinion they do not. I think that the expression "special or local law" cannot possibly be applied to rules under the Letters Patent of a High Court. The Letters Patent themselves constitute neither a special nor a local law. They are a charter from the Crown. The Code of Civil Procedure is a general law in pari materia with the Limitation Act. In my opinion, High Court rules approximate very closely to bye-laws. They can be altered at will. They can be canvassed. They are subordinate and domestic enactments.

20. This dictum has also been approved and followed by the Patna High Court in *Mukund Mahto v. Niranjan Chakravarty*⁷ With great deference, I am unable to accept the reasoning or conclusion of Cunliffe, J. as correct. It is no doubt true that the

⁷ A.I.R. 1934 Pat. 353

Lahore High Court, like the other High Courts in India, was not brought into existence directly by an Act of Parliament. It was "established and erected" by Letters Patent granted by His Majesty, King George V under the authority expressly conferred on him by the Government of India Act, 1915 (5 and 6 Geo. v, chap. 61). Section 113 of that Act laid down that:

His Majesty may, if he sees fit, by Letters Patent, establish a High Court of Judicature in any territory in British India, whether or not included within the limits of the local jurisdiction of another High Court, and confer on any High Court so established any such

jurisdiction, powers and authority as are vested in, or may be conferred on, any High Court existing at the commencement of this Act, etc.

21. Four years later, on 21st March 1919, His Majesty granted the Letters Patent constituting a High Court for the provinces of the Punjab and Delhi. In the Preamble of the Letters Patent, it is expressly stated;

Whereas by an Act of Parliament in the fifth and sixth year of our reign, and called the Government of India Act, 1915, it was, amongst other things, enacted that it shall be Lawful for us by Letters Patent to establish a High Court, etc.

22. The Letters Patent of the Lahore High Court are, therefore, not a charter granted by the Crown in the exercise of the Royal prerogative, independent of, and apart from the authority of Parliament. They were, on the other hand, a charter issued directly under the power delegated to the King by Act of Parliament. Section 27 of these Letters Patent authorized the High Court, from time to time, to make rules and orders for regulating the practice of the Court and for other purposes specified therein. By virtue of the power so conferred, the High Court framed Rule 4, which prescribes a period of 80 days for preferring appeals under Clause 10, Letters Patent. These rules are, therefore, statutory rules and have the same binding force as an enactment of the Legislature itself. It has been said that these rules approximate very nearly to "bye laws" and may be changed by the High Court at will. But as observed by Lord Abinger, C.B. in *Hopkins v. Mayor of Swansea*⁸

A bye-law, regularly made by a corporate body under its charter, has the same effect within its limits, and with respect to the persons upon whom it lawfully operates, as an Act of Parliament has upon the subjects at large. Similarly, it has been laid down in *Gosling v. Veley*⁹ that a bye-law though made by, and applicable to, a particular body, is still a law, and differs in its nature from a provision made on, or limited to, particular occasions: it is a rule made prospectively, and to be applied whenever the circumstances arise for which it is intended to provide.

23. In *Kruse v. Johnson*¹⁰ Lord Russel C.J. remarked:

⁸(1839) 4 M & W 621

¹⁰(1898) 2 Q.B. 91

⁹(1847) 7 Q.B. 451

A bye-law.... I take to be an ordinance affecting the public, or some portion of the public, imposed by some authority clothed with statutory powers, ordering something to be done or not to be done, and accompanied by some sanction or penalty for its non-observance. It necessarily involves restriction of liberty of action by persons who come under its operation, as to acts which, but for the bye-law, they would be free to do or not to do so as they pleased. Further, it involves this consequence, that, if validly made, it has the force of law within the sphere of its legitimate operation. In the well-known case in *Willingale v. Norris*¹¹ Lord Alverstone C.J. observed:

Where a statute enables an authority to make regulations, a regulation made under the Act

becomes for the purpose of obedience or disobedience a provision of the Act. The regulation is only the machinery by which Parliament has determined whether certain things shall or shall not be done.

24. In India the question arose directly in *Neelratan Ganguli v. Emperor*¹², where Rankin Order, J. and Pearson, J. held that the Emergency Powers Ordinance, II of 1932, promulgated by the Governor-General under powers conferred on him by Section 72, Government of India Act 1915, was a 'special law' within the meaning of Section 29, Limitation Act. Similarly, under the Government of India Act, 1935, the Governor-General, as well as the Governors of Provinces, have been given the power, in certain, circumstances, to promulgate ordinances independent of the Legislature, and it is specifically provided that such ordinances "have the same effect as an Act of the Legislature." It cannot be contended that these ordinances are not 'law.'

25. They, as well as bye-laws, rules and regulations promulgated or enacted by proper authority under the power conferred by the Act of the Legislature are instances of 'delegated legislation' and are as much a part of the "law" as enactments passed by the Legislature itself. And where any of such ordinances, bye-laws, rules or regulations deals with a particular subject they are a "special law." It may also be mentioned that in Section 27(a), General Clauses Act, 10 of 1897, as amended by the Government of India (Adaptation of Indian Laws) Order, 1937, "Indian law" is defined as including any law, ordinance, order, bye-law, rule or regulation passed or made at any time by any competent legislative authority or person in India.

26. For all these reasons, it must be held that the statutory rules framed by the High Court under Clause 27, Letters Patent, under the authority delegated to it by His Majesty who, in turn, was acting under the powers conferred on him by Act of Parliament are a 'special law.'

27. It follows therefore that by virtue of the provisions of Section 29, Limitation Act, Section 12 governs appeals under Clause 10 from the judgments passed by the High Court in its appellate jurisdiction and therefore the "time requisite" in obtaining a copy of the judgment appealed from must be excluded. I would, accordingly, hold that *Jog Dhian v. Hussain A.I.R. 1935 Lah. 328(supra)* did not lay down the law correctly and would answer the second question also in the affirmative. The case will be returned to the Division Bench for decision of the other points involved.

¹¹(1909) 1 K.B. 57

¹² AIR 1933 Cal 124 : (1933) ILR 60 Cal 571

Dalip Singh, J.

28. I agree.

Bhide, J.

29. I agree.

Blacker, J.

30. I agree.

Sale, J.

31. I agree.

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