

MADHYA PRADESH HIGH COURT

Kanchhedilal Umrao Singh

Vs.

Maursi Ranjeet Kachhi

Second Appeal No. 169 of 1959, Decided on 31.8.1959, from decree of Addl. Dist J.,
Bhilasa,
(A.H. Khan, J.)

30.03.1959. 31.08.1959

JUDGMENT

A.H. Khan, J.

1. This appeal was filed on 3-8-1959 from the judgment and decree passed by the Additional District Judge, Bhilasa, on 30-3-1959. The office report is that it is barred by time. Copies of the judgment and decree from which this appeal has been filed were obtained on 21-7-1959 and the application for obtaining those copies was also made on that very day. Thus under section 12 of the Limitation Act only one day can be excluded.

2. It is urged by Sri. Karkare that the time spent in obtaining a copy of the judgment of the first court should also be excluded. Under the rules of this court it was not necessary to file that copy. However, that question is of no consequence because only 3 days were spent in obtaining that copy. That also does not bring this appeal within the prescribed time. The copy of the judgment of the first court is not even filed here.

3. The real point raised by Sri Karkare is that on an earlier occasion, that is, on 28-4-1959 an application was made by the appellant for obtaining copies of the judgment and decree of the first appellate court and those copies were supplied on 30-6-1959. Eventually those copies were lost and the appellant now claimed exclusion under Section 12 of the Limitation Act of the period from 28th April to 30th June. In the alternative it is urged that benefit may be given under Section 5 of the Limitation Act.

4. The position of the law is this. Where copies of the judgment and decree are obtained, but are not available for being filed owing to their loss or other cause and subsequently another application for copies is made and an appeal is filed with these copies the time requisite for obtaining the copies which accompany the memorandum of appeal should be excluded and not the time spent in obtaining the other copies. This view is supported in *Thirumala Reddi v. Anavemareddi*,¹ and *State v. Kashi Prasad*,² The period between 28th April and 30th June cannot be excluded under section 12 of the Limitation Act.

5. Now it is to be considered whether there is sufficient cause for excluding the delay under section 5 of the Limitation Act. It cannot be denied that if the appellant obtained certain copies which were necessary to accompany the memorandum of appeal and which by accident or misfortune he lost, the delay caused thereby can be condoned under section 5 of the Limitation Act. But then every day of delay must be explained. Here it seems that after the appellants obtained the copies on the 30th June, they kept quiet. They made an application for obtaining copies of the judgment of the first court on 18th July. These 18 days are unexplained. Then again, the copies of the appellate decree and judgment which have been filed here were obtained on the 21st July, but the appeal was filed on the 23rd August. This gap of all days is also unexplained. What is more it has not been stated either in the application under section 5 nor in the affidavit, which has been filed in support of it, when and in what circumstances those copies were lost. In order to enable it to exercise its discretion with propriety, all the facts must be placed before the court without any concealment or suppression. Here it was particularly necessary to disclose when the copies were lost and when that fact came to the knowledge of the appellants so that their diligence and *bona fides* could be judged. In the absence of necessary particulars, the appellants are not entitled to the benefit under section 5 of the Limitation Act either.

6. The appeal is dismissed as barred by time.

Appeal dismissed.

Cases Referred.

1. ILR 57 Mad 560
2. AIR 1950 All 486

