BOMBAY HIGH COURT

Jayashankar Mulshankar

Vs.

Mayabhai Lalbhai

Letters Patent Appeal No. 26 of 1950. from decision of Dixit, J., in S.A. No. 198 of 1949

(Chagla, C.J., Coyajee and Gajendragadkar, JJ.)

31.07.1951

JUDGMENT

Chagla, C.J.

1. The question that we have to consider in this Full Bench is whether the time that elapses between the pronouncement of the judgment and the signing of the decree should be excluded under Section 12 (2), Limitation Act, and if it is to be excluded whether it should be excluded wholly or should be excluded under certain limitations. The facts that give rise to this Full Bench may be briefly stated. The trial Court delivered its judgment in Ahmadabad on 1-5-1948. The decree was signed on 29-6-1918. The plaintiffs filed the appeal to the District Court on 4-8-1948, and the question that arose was whether the appeal was in time. The learned District Judge took the view that the appeal was out of time and the same view was taken by Dixit, J., in second appeal. Dixit, J., gave leave under the Letters Patent and the matter came before a Divisional Bench which referred the question to a Full Bench. A further fact may be stated which is also material that the plaintiffs applied in this case for certified copies of the judgment and the decree on 17-6-1948. The certified copies were ready on 7-7-1948. The appeal would only be in time if the period between May 1 and 29-6-1918, a period of 59 days, is to be excluded. If that period is not to be excluded, then the appeal would be out of time.

2. Now, before considering the authorities which were cited at the bar, it would be perhaps better to look at this section itself and to see what is the true position under that section on an interpretation of that section in the light of the language used by the Legislature. Section 12 (2) provides that in computing the period of limitation prescribed for an appeal, (and I am using the material words) the time requisite for obtaining a copy of the decree appealed from shall be excluded. It is well settled that the time requisite is not the time actually taken but it is the time properly required. The question that raises certain amount of difficulty is whether the time that is required for preparing a decree is a time of which it could be said that it is a time requisite for

obtaining a copy of a decree.

Two views are possible. One view is that the time taken for preparing the original, of which a copy is to be obtained, must necessarily be the time requisite for obtaining a copy of the original. This view puts greater emphasis on the expression "requisite" than on the expression "obtaining" used in this subsection. The other view is that unless the appellant takes some step in order to obtain a copy of the decree, it could not be said that the time which expired before he took that step was a time requisite for obtaining a copy of the decree. In other words, although the decree was not ready, if the appellant did not apply for a copy, the time taken for preparing the decree could not be excluded, because the appellant had not taken any step for obtaining the decree. In our opinion, equal emphasis should be placed on both the expressions used in this sub-section. What has got to be excluded is the time which is properly required, and the time which has got to be so excluded is the time which is necessary for obtaining a copy of the decree. It is difficult to understand why the action on the part of the appellant in applying for a copy of the decree should be a decisive factor in considering whether time should be excluded under this sub-section or not. It is also difficult to understand why an appellant should apply for a copy of a decree which is non-existent and which has not yet been prepared or signed by the Judge It would seem that if the appellant had applied for a copy of a decree which was not really, then the time taken up to prepare the decree would have been excluded, but merely because he did not apply for a copy that time should not be excluded. It seems to us that it is rather futile on the part of the appellant to apply for a copy when in fact the original is not ready and when in fact no copy of the original could be given to him. From this it does not follow that the whole of the time required for preparing the decree should necessarily be excluded in every case. We may have a case where the preparation of the decree to entirely left to the Court, where the intervention of the parties is not at all necessary, and all the time spent for the preparation of the decree is the result of what the Court has got to do and the various steps that the Court has to take. In a case like this, it may be that the whole time would have to be excluded. But we may have a case where the intervention of the party is necessary in order to prepare the decree. Various steps might have to be taken by the parties or their lawyers before a decree could be ready and before it could be signed. In a case like this, the Court would have to consider whether any of the time taken up for the preparation of the decree could be attributed to the fault or negligence of the appellant. If any of the time could be so attributed, then that time could not be excluded under Section 12 (2). A case like this frequently arises on the Original Side of this Court where decrees have got to be drawn up by solicitors, where drafts are considered, where various appointments are to be made with the Prothonotary and so on and so forth. Therefore, a question like this as to whether the whole of the time is to be excluded or not would become more material on the Original Side than perhaps on the Appellate Side where decrees are drawn up more by the Court than with the assistance of the parties or through the intervention of the parties. Even in the Districts, if it is established that by a rule or practice of the Court lawyers have to sign decrees before the draft of a decree is put up before the Judge for his signature, then if any time has been unduly taken up by the lawyers in signing the decree, such time might have to be excluded. Therefore, apart from authorities, with which we shall presently deal, the view we take on a construction of this section

is that the time properly taken for the preparation of the decree and the time which elapses between the pronouncement of the judgment and the signing of the decree should be excluded under Section 12 (a), Limitation Act. We advisedly use the word "properly" because it is not necessarily the whole of the time that must be excluded in every case. If it is established to the satisfaction of the Court that in any particular case the whole of the time was not properly required for the purpose of preparing the decree, then such time as was not properly required would not be excluded under Section 12 (2), Limitation Act.

3. Turning to the authorities, we have a decision of a Full Bench of this Court in *Murlidhar v. Motilal*[1], The question that strictly fell to be determined in that case was whether an application for a copy of a decree could be made after the period of limitation and the Full Bench came to the conclusion that such an application could be made. Therefore, the question that we have to consider in this Full Bench did not directly arise for decision. It will also be noticed that on a consideration of the dates mentioned the appeal in that particular case would have been in time, even if the period taken up for the preparation of the decree bad not been excluded. Therefore, this particular point was not even necessary for the determination of the question which that Full Bench actually considered and decided But there are weighty observations of the learned Chief Justice in that case to which it is necessary to refer. At p. 43 the learned Chief Justice says : "It is, no doubt, self-evident that a copy cannot be supplied of a decree which does not exist"; and later on he says (p. 43) :

> "In my opinion, if the time actually required for obtaining a copy of the decree has been increased by the default of the appellant in getting the decree settled, then the time taken for obtaining a copy of the decree was not requisite within the meaning of Section 12." Therefore, the learned Chief Justice accepts the proposition that it is not necessary to apply for a copy of a decree which does not exist, and he also accepts the proposition that if time for obtaining the decree has been increased by the default of the appellant in getting the decree settled, that time cannot be considered to be requisite time within the meaning of Section 12. This decision was followed by a decision in *Balappa Tammanna v. Dyamappa Bhusappa*[2], to which the learned Chief Justice was a party. It is important to note that in that case the appeal would not have been in time unless the period between the pronouncement of the judgment and the signing of the decree, which was 14 days, had not been excluded. But there are certain observations of the learned Chief Justice with which, with respect, we do not agree. The learned Chief Justice suggests that even after the decree is signed and is ready, a party may require some time to consider the decree and to obtain the advice of his lawyer, and such time may be excluded under Section 12 (2). In our opinion no time beyond the time actually required for the preparation of the decree can be excluded within the meaning of Section 12 (a).

4. Reliance was placed on a decision of Divatia and Bavdekar, JJ,. in *Bhausaheb Jamburao v. Sonabai*[3], and Mr. Shah contends that that decision is in favour of the view for which he

contends, viz. that the period between the pronouncement of the judgment and the signing of the decree cannot be excluded under Section 12 (2) of the Limitation Act. In that case the dates are rather material. The judgment was given on 12-7-1943, and the decree was drawn up by the office and signed by the advocates on the 19th, and the decree was signed by the Registrar on September 8. Therefore, the decree was signed and ready on September 8. The appellant applied for certified copies of the judgment and the decree on October 2, and the certified copy of the decree was ready on October 20 and the certified copy of the judgment was ready on November 4. That was a case of an application for leave to appeal to the Privy Council and the application was filed on November 26, the period of limitation being 90 days under Article 179. The learned

[1]39 Bom LR 32 [3]41 Bom LR 97

[2]42 Bom LR 872

Judges did consider the question as to whether the period between July 12 and September 8 should be excluded or not because they dealt with the decision in Balappa Tammanna's case (42 Bom LR 872) and they observed (p. 98) :

> "This decision does not, in our opinion, lay down that in every case a party is entitled, as a matter of right, to the benefit of the interval between the passing of the decree and its being signed."

But having considered that judgment, with respect, they failed to apply the test laid down either in that judgment or in *Murlidhar v. Motilal*[4], to the facts before them. They did not consider whether in that particular case the period between July 12 and September 8 should or should not be excluded. The only point they considered was whether the period between September 8 and October 2 should be excluded, and taking the view that the time that expired was not a reasonable one and no explanation was given as to why that time had been taken up before an application for certified copy was made on October 2, they came to the conclusion that period should not be excluded. With respect, they were only dealing with one aspect of the decision in Balappa Tammanna's case, an aspect with which we have just dealt and an aspect which has not appealed to us because that aspect was that some time may be excluded after the decree was ready if time was necessary for studying the decree or consulting a lawyer. But this decision cannot be read as laying down one way or the other as to whether the period between the date when the judgment was pronounced and the date when the decree was signed should or should not be excluded.

5. Then there is the recent judgment of a Division Bench in *Kanji Devsi v. Velji Haridas*[5], to which myself and my brother Gajendragadkar, J., were parties. At p. 407 in delivering the judgment of the Court I observed :

> "...Therefore, applying that test, we have first the position that the decree was not signed till 22-10-1948, and therefore no copy of the decree could have been supplied and the time taken between 29-9-1948, when the judgment was pronounced and 22-10-1918 when the decree was signed must be excluded. If authority was required for the proposition, see *Balappa Tammanna v. Dyamappa Bhusappa*[6],."

In that particular case we were considering the question of the overlapping of time and we held that time could not be allowed to overlap when two separate applications were made for a copy of the judgment and a copy of the decree. But there is this observation of ours which may lead one to think that we were laying down a categorical rule that in every case the time taken between the pronouncement of the judgment and the signing of the decree should be excluded. As we have just pointed out, we are not laying down any unqualified rule. In ordinary cases it may be that such a time would be excluded, but there may be cases where the Court would have to scrutinize whether the whole of the time was properly required or not.

6. Turning to the judgments of the other High Courts, we have the judgment of a Full Bench of the Calcutta High Court in *Secretary of State v. Parijat Debee*[7], There the

[4](89 Bom LR 32)
[5]52 Bom LR 405
[6]42 Bom LR 872
[7]59 Cal 1215 (FB)

learned Judges were dealing with an appeal from the Original Side and the principle they laid down is, with respect, the principle to which we ourselves have just subscribed, and what they said was that in an appeal from the Original Side the appellant is as of right entitled to the exclusion of such time as is properly required for the drawing up of the decree or order, assuming that no part of the delay, if any, is due to his default. Now, the learned Sir John Beaumont, C.J., in *Murlidhar v. Motilal*[8], with respect to him, was not quite fair to the Calcutta High Court. He read the decision of the Calcutta High Court to mean that the requisite time for obtaining a copy of the decree in no case begins to run until the decree has been sealed. The Calcutta High Court has not laid down this principle in the categorical unqualified terms which the learned Chief Justice thought that Court was laying down. As I have just pointed out, the rule is laid down with the necessary and important qualification that no part of the delay should be due to the default of the appellant.

7. Then there is a judgment of the Full Bench of the High Court of Patna in *Gabriel Christian v. Chandra Mohan*[9], At first blush it may appear that the Patna High Court was in favour of the exclusion of the time between the pronouncement of the judgment and the signing of the decree in unqualified terms. But a little more careful study of the judgment shows that that is not so because this categorical exclusion should only be availed of, according to the Patna High Court, when the decree of the trial Court follows upon the judgment without the parties being required to do anything in the interval. In such cases, according to the Patna High Court, the appellant will be entitled to the exclusion of the time between the judgment and the decree and then the Patna High Court points out (p. 294)

> "...,. In exceptional cases 'such (for instance) as cases of partition and meane profits, the drawing up of the final decree may depend upon the filing of the necessary stamp paper or Court-fees ; in such cases the exclusion of time in favour of the party who is to file the Court fees will depend upon the circumstances, but other parties to whom no responsibility attaches for the delay will be entitled to exclude the time."

8. Then we have the Nagpur High Court which also considered this question in a Full Bench in *Umda v. Rupchand*[10], With very great respect to the learned Judges, it is rather difficult to understand the principle they are laying down in that judgment. It is pointed out that "it is clear that the limitation for an appeal runs from the date of the decree, which is the date of the judgment." There is no dispute with regard to that proposition. Then the judgment goes on (p. 2) :

> "If delay in signing the decree actually prevents the applicant from obtaining a copy of it, he has only to apply for the copy of the decree before it is signed and an allowance will automatically be made under Section 12, Limitation Act, for the period during which the decree remained unsigned."

The test they lay down is that the decree should actually prevent an applicant from obtaining a copy of it, It is difficult to understand how delay in signing a decree can ever

[8]39 Bom LR 32 [10] AIR 1927 Nag 1

[9]15 Pat 284.

prevent a party from applying for a copy of it. If this is intended in the sense that an application for a copy of the decree which is non-existent is an entirely futile proceeding, then, with respect, one understands the observation, but otherwise there is nothing to prevent a party from putting an application on file for a copy of a decree although the decree may not have yet come into existence, Then they go on to say :

> "We think it clear that where an application for a copy is made after the decree is signed no allowance whatever can be made for any part of the period during which it remained unsigned."

With respect, we are unable to agree with this view. Here, again, emphasis seems to have been placed on the application for a copy of the decree and not on the fact that the very document of which a copy was sought was not prepared or not in existence. and the distinction drawn between the application before the signing of the decree and after the signing of the decree does not, with respect, seem to be based on any principle.

9. Then, we came to the decision of the Allahabad High Court in *Keshar Sugar Works v. B.C. Sharma*[11], which has taken the opposite view to the one which we are suggesting is the correct view on the interpretation of Section 12 (2), Limitation Act. With respect, we would immediately concede that logically the view taken by the Allahabad High Court is a possible view, and the view taken by that Full Bench is that the preparation or the non-preparation of a decree has nothing whatever to do with the time requisite for obtaining a copy of the decree. According to the Allahabad High Court, some definite step should be taken by the appellant towards the attainment of the copy, and unless such definite step is taken, it could not be said that any time was required for obtaining the copy. Therefore, if the decree is not signed and the appellant has

not applied for a copy, the time that is taken up for the preparation of the decree cannot be considered to be the time requisite for obtaining the copy, because the appellant himself has taken no definite step. He has done nothing for the purpose of obtaining the decree. If this be the correct view, then it must follow that the appellant should apply for a copy as soon as the judgment is delivered and it should also logically follow that if the appellant waits till the period of limitation has run out and then applies for a copy, then time should not be excluded under Section 12(2), Limitation Act. It might be stated that this was the view once held by this Court as is to be found in *New Piece Goods Bazaar Co. v. Jivabhai*[12], In that case Sir Basil Scott, C.J., and Chandavarkar, J., took that view, and Sir Basil Scott, C.J., pointed out that that principle would cause no hardship to the appellant because all he had to do was to show by his application that he intended to appeal and to make his application within the time limited for the purpose. This view has been expressly overruled by the Full Bench to which reference has been made in *Murlidhar v. Motilal*[13], Therefore, there is a clear indication that as far as this Court is concerned, ever since the Full Bench decision in *Murlidhar v. Motilal*, we took a different view of Section 12 (2) from the view adopted by the Allahabad Full Bench in *Keshar Sugar Works v. B.C. Sharma*, and the view that we are now taking in this Full Bench is the logical and consistent extension of the view adopted in the earlier Full Bench in 39 Bom LR 32.

10. There is one more case to which reference might be made, because it is rather an

[11] AIR 1951 All 122
[12]15 Bom LR 681
[13](39 Bom LR 32)
[14]49 Ind App 307

instructive case, and that is a decision of the Privy Council in *Pramatha Naih Roy v. W.A. Lee*[14], Their Lordships were there considering an appeal from the Calcutta High Court on the Original Side, and the question was whether that particular appeal was in time, and Lord Buckmaster delivering the judgment of the Board considered the various steps taken by the appellant in getting the decree signed, and it is rather significant that their Lordships did not consider the question of the application for a copy of the order at all. That was not the test that they applied. What they considered was whether the time taken up between the making of the order and the signing of it was properly taken up or whether part of it was due to the default of the applicant. That case clearly shows that their Lordships did not consider the application for a certified copy as the conclusive test. That case rather assumes that the period between the making of the order and the signing of it should be ordinarily excluded, and that is why their Lordships were at pains to consider whether the whole of that period was properly required or whether part of it was taken up by reason of default on the part of the applicant.

11. It has been suggested at the bar that the principle we are laying down may lead to dilatoriness on the part of the appellants and it may also lead to a considerable delay in preparing the decree. We fail to understand what connection there should be between an application for a certified copy of a decree and the preparation and signing of the decree. The Court has to prepare and get

the decree signed irrespective of any application made for a certified copy. It is for the Courts to see that they are diligent in getting the decree prepared and signed, an act which is made incumbent upon them under the Code. It is for the Courts to see that the period of limitation is not unnecessarily extended by the delay caused by the Court itself in preparing the decree.

12. Turning to this particular case before us, Dixit, J., has found as a fact that the appellants were not in default in the delay that took place in the signing of the decree. But the learned Judge thinks the period of 59 days that elapsed between 1-5-1948, when the judgment was pronounced and 29-6-1948, was unduly long and from that he infers that it was an unreasonable period and therefore the whole of that period should not be excluded under Section 12 (2). With very great respect to the learned Judge, it is difficult to understand how, once it is found that the appellants were not responsible for the delay, any portion of the period of 59 days should not be computed for the purpose of Section 13 (2). However long the delay might be, however unreasonable it may be, if the appellants were not responsible for the delay and if the Court was responsible for the delay, we fail to Bee why the appellants should be penalized for the period that expired between the pronouncement of the judgment and the signing of the decree. The delay may be unreasonable, but if default is to be found at all, it is to be found with the Court and not with the appellants whom the learned Judge himself has acquitted of any negligence which led to the failure to prepare the decree in sufficiently short time. Therefore, on the facts of this case we hold that the period between 1-5-1949, and 29-6-1948, was a period requisite for the purpose of applying for a certified copy of the decree within the meaning of Section 12 (2), and the whole of this period must be excluded in computing the period of limitation.

13. Under these circumstances we must hold that the appeal preferred to the District Judge was in time, that the decree of the appellate Court will be set aside, and the appeal remanded to him for disposal according to law. I think the fair order to make with regard to costs is that the appellants should get their costs of the Letters Patent appeal, but costs of the second appeal before Dixit, J., and the costs of the appeal before the District Judge should be costs in the appeal which we are now remanding to the learned District Judge. We direct that the learned District Judge should dispose of the appeal expeditiously, and the papers to be sent to the District Court immediately.
Appeal remanded.