

BOMBAY HIGH COURT

Sitaram Dada Sawant

Vs.

Ramu Dada Sawant

First Appeal Stamp No. 8263 of 1966

(Chandrachud, J.)

14.12.1966

JUDGMENT

Chandrachud, J.

1. By his order dated the 26th of September 1966, the learned Registrar has held that First Appeal Stamp No. 8263 of 1966 filed by the defendants in this Court is barred by limitation. The defendants have filed this note under Rule 7(1) of the Appellate Side Rules for revision of the Registrar's Order. As the question is of general importance I would like to state my reasons for holding that the Registrar is right in the view he has taken.

2. In a suit filed by the respondent against the appellants, the learned Civil Judge, Senior Division, Kolhapur, delivered his judgment on the 23rd of September 1965. He decreed the suit but directed :-

"Decree to be drawn up subject to the payment of necessary Court-fee stamp by the plaintiff who shall recover the same from the two defendants as per above order."

The respondent paid the necessary Court-fees on the 16th of December 1965 and the decree was drawn up on the 23rd of December 1965. The appellants applied for certified copies of the judgment and decree on the 22nd of February 1966 and those copies were ready for delivery on the 30th of March 1966. The appellants filed the First Appeal in this Court on the 13th of June 1966, on the re-opening of the Court after the Summer Vacation.

3. Under Article 116 of the Limitation Act, 1963, the period prescribed for filing an appeal to the High Court is ninety days and the time begins to run from the date of the decree or Order if the appellants are entitled to the exclusion of the time from the 23rd of September 1965, the date of judgment, till the 30th of March 1966, their appeal would be within limitation. If on the other

hand the time between the 22nd of February 1966, when the appellants applied for certified copies of the judgment and decree, and the 30th of March 1966, when the certified copies were ready is alone excluded, the appeal as held by the learned Registrar would be beyond time by eighty-two days.

4. The material provision of the Limitation Act that is required to be considered in this matter is Section 12 which provides by Sub-Section (2), in so far as is material, that in computing the period of limitation for an appeal the time requisite for obtaining a copy of the decree appealed from shall be excluded. The Explanation to Section 12 provides that in computing the time requisite for obtaining a copy of a decree or an order :

"Any time taken by the Court to prepare the decree or order before an application for a copy thereof is made shall not be excluded."

Now, as held by a Full Bench of this Court in *Jayashankar Mulshankar Mehta v. Mayabhai Lalbhai Shah*¹, the time requisite for obtaining a copy of the decree is not the entire time spent by the Court in preparing the decree but the time which is properly necessary for obtaining a copy of the decree. The time which was taken by the Court in preparing the decree in this case shall have to be excluded, because that time was certainly not taken on account of any default on the part of the appellants. If the respondent, who was liable under the judgment of the Trial Court to pay Court-fees before the drawing up of the decree, had taken an unreasonable time for paying the Court-fees, the question might have arisen, if he were to file an appeal, whether the time between the date an application was made by him for obtaining certified copies of the judgment and decree and the date on which those copies were ready could be excluded even if such an application was made by him immediately after the judgment was delivered. In fact, it is in that class of cases that the question as to what is the time requisite for obtaining a copy of a decree arises in a sharp form. As the appellants were not bound under the judgment to do any act or to take any step as a condition precedent to the drawing up of the decree, the entire time between the date when they applied for certified copies and the date when the copies were ready shall have to be excluded.

5. This however, does not assist the appellants, because it is only if the time between the 23rd of September 1965, being the date of judgment, and the 30th of March 1966 when the copies were ready for delivery is excluded that the appeal could be within limitation. Mr. Pendse, who appears on behalf of the appellants, says that under the judgment of the trial Court the decree could not be drawn up until the respondent had paid the Court-fees and it was futile to apply for a certified copy of the decree unless the condition precedent to the drawing up of the decree was fulfilled by the respondent. In support of his submission that the entire time between the 23rd of September 1965 and the 30th of March 1966 must be excluded, Mr. Pendse relies upon the judgment of the Full Bench cited above, namely, 54 BomLR 11 : (AIR 1952 Bombay 122 FB). In that case the Full Bench has taken the views that it is not necessary for an appellant to apply for a copy of the decree which is not in existence and which is neither prepared nor signed by the Judge. According to the learned Chief Justice, who delivered the judgment of the Full Bench, it would be futile for the appellant to apply for a copy when the original itself is not ready, because there

can be no copy without the original. Now, the view taken by the Full Bench as regards the necessity for making an application for a copy of a document which is not yet ready is, in my opinion, not good law today by reason of the Explanation to Section 12 of the Limitation Act. The object of the Explanation is to require the appellant to apply for a copy of the decree even if the decree is not ready. That is why the Explanation says in terms that the time taken by the Court to prepare the decree before an application for a copy thereof is made shall not be excluded. In other words, the

¹⁵⁴ Bom LR 11 : (AIR 1952 Bom 122 FB)

Explanation contemplates that the period between the date of the application for a certified copy of the decree and the date when the copy is ready can alone be excluded. If a party applies for a certified copy of the decree after the decree is drawn up, the time between the date of judgment and the date on which the decree was drawn up cannot be excluded, because under the Explanation the time taken by the Court to prepare the decree before the application for a copy thereof is made shall not be excluded. In my opinion, therefore, the appellants will not be entitled to the exclusion of the entire period between the date of judgment and the date when certified copies of the judgment and decree were ready for delivery. They are entitled only to the exclusion of the in between the date on which they applied for certified copies and the date on which those copies were ready for delivery.

6. Mr. Pendse felt surprised that the Legislature should expect a party to apply for a copy of a non-existent document in so far as I see the object of the Explanation is clear and that object can be demonstrated by a reference to the facts of this very case. The judgment was delivered by the trial Court on the 23rd of September 1965 and though the period for filing an appeal to the High Court is ninety days, the application for a certified copy of the judgment was not made until the 22nd of February 1966. Mr. Pendse says that the appeal lies not against the judgment but against the decree and, therefore, it was futile to apply for a certified copy of the Judgment. Now, this argument overlooks the provision contained in Order 20, Rule 7 of the Code of Civil Procedure that the decree shall bear the date on which the judgment was pronounced. Wherever therefore a decree is drawn up, in sense it related back to the date of the judgment, for regardless of when it is drawn up it must bear the date of the judgment. If the appellants had made application for certified copies of the judgment and decree within ninety days of the date of judgment, it would have been easy enough for them to obtain the certified copies of both the documents soon after the 23rd of December 1965, when the decree was drawn up. If the certified copies of the judgment and decree were ready for delivery in late December or early January, the appellants would have been required to file their appeal in this Court much earlier than when they in fact filed it. Permitting a litigant to writ for making an application for certified copies until the decree is drawn up leads in most cases to delay and the Legislature wanted to combat this evil. It, therefore, provided by the Explanation to Section 12 that the time taken by the Court to prepare the decree or order before an application for a copy thereof is made shall not be excluded.

7. In my opinion, therefore, whether a decree is drawn up or not, or whether it is signed or not.

the time taken by the Court for preparing the decree before the date on which the appellant applies for a certified copy of the decree cannot be excluded in computing the period of limitation for filing the appeal. I accordingly, agree with the learned Registrar that the appeal filed by the defendants is barred by limitation. The appellants shall have to file an application for condonation of the delay, though if they make such an application, I have no doubt that the delay caused in these circumstances will be condoned.

Order accordingly.