

BOMBAY HIGH COURT

Subhash

Vs.

Maroti

(Kantawala, C.J., Tulzapurkar and Masodkar, JJ.)

Civil Appln. No. 353 of 1973, in Second Appeal St. No. 1877 of 1971 with Civil Appln. No. 354 of 1973 in Second Appeal St. No. 1875 of 1971

27.08.1974

JUDGMENT

Tulzapurkar, J.

1. Two questions have been referred to this Full Bench by the learned Single Judge for our determination which run as follows :-

(1) What is the true and correct interpretation of the Explanation appended to Section 12 of the Limitation Act, 1963 and whether by that Explanation a litigant applying after the decree is made can exclude the time taken by the Court to prepare the decree and treat it as the time requisite for obtaining a copy of decree under Section 12 (2) of the Act ?

(2) Whether after the passing of the 1963 Act under Article 116 the starting point for limitation is the date on which actually the decree is made; or is the date of the judgment still the starting point for limitation ?

2. Principally the first question centers round the true and proper interpretation of sub-section (2) of Section 12 of the Limitation Act 1963 and the Explanation thereto and the question arises under these circumstances : The above two Second Appeals were filed in this Court on 1st March, 1971, and the question is whether the appellant in each of the Appeals is entitled to get the benefit of Section 12 (2) read with Explanation thereto and can contend that the appeals are filed within the time prescribed for filing appeals. To understand the claim made by the appellants it will be necessary to set out certain dates. The judgment against which the appeals have been preferred was delivered on 26th October, 1970, the decrees were signed by the First Appellate Court on 9th December, 1970. Application for certified copies of the decree were made by the appellants on 6th February, 1971; the copies became ready for delivery on 19th February, 1971, and they were also received by the appellants on the same day and thereafter the

appeals were filed by the appellants in this Court on 1st March, 1971. The question principally is whether the time taken by the Court for drawing up of its decree is to be included within the concept of 'time requisite' for obtaining the certified copy of the decree and it was not disputed before us that if this time, namely the time between the date of the pronouncement of the judgment (26th October, 1970) and the date when the decrees were prepared and signed (9th December, 1970). was included within the time requisite for obtaining a copy of the decree the appeals would be within the prescribed period of limitation, but if this period was not so included the appeals would be barred by 22 days.

It may incidentally be mentioned that the appellant in each of these cases had applied for condonation of delay under Section 5 (vide Civil Application No. 353/73 and Civil Application No. 354/ 73) but the learned Single Judge was not satisfied that the appellants were prevented by sufficient cause from preferring their appeals within the prescribed period of limitation. In other words, the applications for condonation of delay were rejected by him and therefore the claim of the appellants that there has been no delay in presenting the appeals and the same have been filed within the prescribed period of limitation arises for our consideration. Before the above question is considered under the provisions of the 1963 Act, it would be desirable to indicate what was the position of law on the aspect under consideration under the prior enactment and it would be convenient at this stage to set out the old Section 12 of the 1908 Act; sub-section (2) of that section, which would be relevant, ran as follows :-

"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."

There was no Explanation whatsoever appended to this provision and the phrase 'time requisite for obtaining a copy of the decree' came up for consideration in several cases before the Courts and the two words 'requisite' and 'obtaining' occurring in the said phrase were considered in a particular manner. The view consistently taken by all the courts was that the word 'requisite' did not mean merely required but it meant 'properly required' and similarly the word 'obtaining' indicated an effort on the part of the applicant to get a copy of the decree.

Laying equal emphasis on both the aforesaid words and interpreting them in this manner a Full Bench of this Court in the case of *Jayashankar Mulshankar v. Mayabhai Lalbhai*, reported in¹ took the view that 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 also took the view that the action on the part of the appellant in applying for a copy of the decree was not a decisive factor in considering whether time should be excluded under this sub-section or not, so it felt that it was futile on the part of the appellant to apply for a copy when in fact the original was not ready and when in fact no copy of the original could be given to him. But from this it did not follow that the whole of the time required for preparing the decree should

necessarily be excluded in every case. The Court further took the view that there may be a case where the preparation of the decree was entirely left to the Court, where the intervention of the parties was not at all necessary and all the time spent for the preparation of the decree was the result of what the Court had got to do and the various steps that the Court had to take, and in a case like this, it might be that the whole time would have to be excluded. But there may also be a case where the intervention of the party was necessary in order to prepare the decree : various steps might have to be taken by the parties or their lawyers

¹ AIR 1952 Bom122 (FB)

before a decree could be ready and before it could be signed in such a case 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 and if any of the time could be attributed then that time could not be excluded under Section 12(2). Now ordinarily the distinction that has been pointed by this Court in the above decision principally relates to the position which obtains on the Original Side of this Court where the appellants or their attorneys are required to take steps for drawing up of the decree and the position which obtains in the mofussil where the parties or their advocates are not required to take such steps except by way of paying stamp duty necessary for drawing up of the decree or handing over of the folios for the purpose of drawing up of the decree and the view which this Court took was that the time properly taken for the preparation of the decree and the time which lapsed between the pronouncement of the judgment and signing of the decree should be excluded under Section 12(2). 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). In other words, under the old provision of Section 12 (2) of the Limitation Act, 1908, the time requisite for obtaining a copy of the decree was regarded as having been made up of two periods, (a) period requisite for bringing the original decree into existence and (b) period requisite for preparing a copy after the decree had come into existence and that both these periods would have to be excluded if in the process of bringing into existence the original decree any steps as such were not required to be taken by the appellant.

3. The question as to what time could be legitimately deemed to be taken for obtaining a copy of the decree under the old Section 12 (2) came up for consideration before the Supreme Court in the case of *Jagat Dhish Bhargava v. Jawahar Lal Bhargava*, reported in² and the Court pointed out that there was a sharp difference of opinion between different High Courts on the question as to how the concept of 'time requisite for obtaining a copy' was to be understood. The Court pointed out that on the question of computation of time requisite for obtaining a copy of the decree, the Full Bench of High Courts of Bombay AIR 1952 Bombay 122 (FB), Calcutta ((1886) ILR 13 Cal 104 (FB)) and Patna AIR 1936 Patna 45 (FB) had taken the view that the entire period taken by the Court for preparing the decree after pronouncement of the judgment should be included in computing the time requisite for a copy of the decree, irrespective of whether an application for such a copy was made either before or after the decree had been prepared but on the other hand the Full Bench of Nagpur High Court AIR 1927 Nagpur 1 (FB) had taken a

different view that if an application for a copy was not made before the decree was prepared by the Court, the period between the date of the judgment and the date of preparation of the decree could not be taken as time requisite for obtaining a copy of the decree and as such should not be excluded in computing the period of limitation. Paragraphs 9 and 10 of that judgment which are material run as follows :-

"9. The answer to the question as to whether the presentation of the appeal on December 23, 1959, is in time or not would depend upon the construction of Section 12, sub-section (2) of the Limitation Act. We have already noticed that the period prescribed for filing the present appeal is 90 days from the date of the decree. Section 12, sub-section (2), provides, *inter alia*, that in computing the

² AIR 1961 SC 832

period of limitation "the time requisite for obtaining a copy of the decree shall be excluded." What then is the time which can be legitimately deemed to have been taken for obtaining the copy of the decree in the present case ? Where a decree is not drawn up immediately or soon after a judgment is pronounced, two types of cases may arise.

A litigant feeling aggrieved by the decision may apply for the certified copy of the judgment and decree before the decree is drawn up or he may apply for the said decree after it is drawn up. In the former case, where the litigant, has done all that he could and has made a proper application for obtaining the necessary copies, the time requisite for obtaining the copies must necessarily include not only the time taken for the actual supply of the certified copy of the decree but also for the drawing up of the decree itself. In other words, the time taken by the office or the Court in drawing up a decree after a litigant has applied for its certified copy on judgment being pronounced, would be treated as a part of the time taken for obtaining the certified copy of the said decree. Mr. Pathak has fairly conceded that on this point there is a consensus of judicial opinion, and in view of the formidable and imposing array of authorities against him he did not raise any contention about the validity of the view taken in all these cases." (The Court referred to the Full Bench decision of the Bombay, Calcutta and Patna High Courts mentioned above and other decisions).

"10. There is, however, a sharp difference of opinion in regard to cases where an application for a certified copy of the decree is made after the said decree is drawn up. In dealing with such cases Courts have differed as to what would be the period requisite for obtaining the certified copy of the decree. The Bombay, Calcutta and Patna High Courts appear to have held that the period taken in drawing up of the decree would be part of the requisite period, while other High Courts have taken a contrary view. It is significant that though the High Courts have thus differed on this point, in every case an attempt is judicially made to do justice between the parties. With that aspect of the problem, however, we are not concerned in the present appeal."

It must, however, be stated that the case that had arisen before the Supreme Court fell within the

former category mentioned in para. 9 of its judgment. It was a case where an application for a certified copy of the decree had been made by the appellant before the decree had been prepared and signed by the Judge. Obviously, therefore, the question of resolving the difference of opinion which obtained between different High Courts in a case where an application for a copy of the decree was made after the decree had been signed did not arise and in view of the Full Bench decisions referred to at the end of para. 9, the Court held that the appeal in that particular case was preferred within limitation. Though an unduly long period of five years was taken by the lower Court to draw up its decree the same was held as time requisite for obtaining the copy and was counted in favor of the appellant.

4. Having indicated what was the position under the old provisions of the 1908 Act, it would now be desirable to consider the question under the relevant provisions of the 1963 Act. Section 12 deals with the topic of exclusion of time in legal proceedings and sub-section (2) thereof which is material, runs as follows :-

"12 (2). In computing the period of limitation for an appeal or an application for leave to appeal or for revision or for review of a 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 revised or reviewed shall be excluded." Omitting sub-sections (3) and (4) with which we are not concerned, we would reproduce the Explanation which again is material for our purpose; it runs as follows :-

"Explanation :- In computing under this section 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."

Contrasting the above provisions with the old provision it will appear clear that by the 1963 Act two changes have been effected. First a provision for exclusion of time requisite for obtaining a copy for preferring a revisional application has been made and secondly an Explanation which was not there has been added and having regard to the language thereof it is clear that the Explanation is germane and referable to sub-section (2) and has to be read with that provision and no other of Section 12.

5. Now on the facts of the instant case, admittedly the application for certified copy of the decree was made on 6th February, 1971, which was long after the decree had been prepared and signed by the lower Appellate Court and the question that arises for our consideration is whether in such a situation the time taken by the Court for preparation of the decree between the date of the pronouncement of judgment (26-10-1970) and the date of the signing of decree (9-12-1970) is to be included within 'the time requisite for obtaining a copy of the decree' or not, that is to say, whether the said period is to be excluded in computing the prescribed period of limitation for filing the appeal and on this question rival submissions were put before us. On behalf of the appellants Mr. Deopujari contended that reading sub section (2) of Section 12 together with the Explanation the aforesaid time or period that was taken by the Courts for drawing up its decree

will have to be included within the 'time requisite for obtaining a copy of the decree' so that the appellants were entitled to enlarged period of limitation for filing their appeals. It was pointed out that under sub-section (2) of Section 12 in computing the period of limitation for an appeal 'the time requisite for obtaining a copy of the decree' is to be excluded and how the time requisite for obtaining a copy of the decree is to be computed has been clearly indicated in the Explanation which states that in computing such 'time requisite' any time taken by the Court to prepare the decree before an application for a copy thereof is made shall not be excluded, which means that the same shall be included. He, therefore, urged that if this period between the pronouncement of the judgment and the signing of the decree was available to the appellants for exclusion for the purpose of computing the period of limitation for filing an appeal, the appeals filed by his clients on 1st March, 1971, were clearly within the prescribed period of limitation. On the other hand, it was contended by Mr. Choudhary appearing for the respondent that the Explanation has to be read along with substantive provision contained in Section 12 (2) of the Act and if it was so read and if regard was had to the object for which the Explanation has been introduced in 1963, it would be clear that a duty has been cast upon the litigant desirous of preferring an appeal to make the application for a certified copy of the decree as early as possible or soon after the judgment has been pronounced, for, it was then that the period which was taken by the Court for preparing its decree after such an application has been made that could be included within the concept of the time requisite for obtaining a copy of the decree and under the Explanation the Legislature has clearly indicated that any time taken by the Court to prepare the decree before an application for a copy thereof is made should not be available to or should not count in favour of the appellant. According to him, the entire section positively deals with the exclusion of time in legal proceedings and that was clear from the marginal note as also the substantive provisions contained in sub-sections (1) to (4) of the section and it is in the context of such substantive provisions of the section that speak of exclusion of time that the Explanation will have to be interpreted and if it is so interpreted the words "shall not be excluded" occurring therein cannot be construed as "shall be included", moreover, the Explanation has undoubtedly cast a duty on the appellant to file the application for a copy no sooner judgment is pronounced and in view of this he urged that if the interpretation sought to be placed on the Explanation by the appellants is accepted it would place a non-diligent appellant at an advantage as against diligent appellant in that both would be put on the same footing in the matter of getting exclusion of time for the purpose of preferring an appeal and that would not be consistent with the object of Legislature in casting a duty on the appellant to apply for a copy no sooner the judgment is pronounced. He, therefore, urged that since in this case the applications for certified copies were made on 6th February, 1971, long after the decree had been prepared and signed by the lower Appellate Court, the period between 26th October, 1970 and 9th December, 1970, should not under the Explanation be excluded for the purpose of computing the limitation.

In support of the construction which he canvassed before us he strongly relied on the recommendations made by the Law Commission on the strength of which the provisions of the old 1908 Act were recast as also on the Statement of Objects and Reasons appended to the Bill which was placed before the Central Legislature. He pointed out that in the context of old Section

12 (2) the Law Commission had made the following recommendation in para. 37 of its Report :-

"Some Courts have taken the view that the delay in drafting the decree before an application for a copy is made should be deducted as 'time requisite'. But we think that a delay of the office before the application for a copy is made should not count in favor of the party. A suitable provision should be added to make this clear."

He further pointed out that Bill No. XI of 1962 which ultimately became the Limitation Act, 1963, was introduced in the Rajya Sabha on 15th June, 1962, with a view to implement the Law Commission's report and that in the Statement of Objects and Reasons appended to the Bill the object or purpose of inserting the new Section 12 has been stated as follows :-

"The existing Section 12 is being amended ;

(i) to include application for revision within its scope ;

(ii) to provide expressly that the time requisite for obtaining a copy of the judgment in the case of an application for leave to appeal is also to be excluded ;

(iii) to make it clear that any delay in the office of the court in drawing up a decree or order before the application for a copy thereof is made, shall not be excluded."

Relying upon the recommendation of the Law Commission and the object with which Section 12 (2) and the Explanation thereto were enacted Mr. Chaudhary contended that the Explanation must be so construed that any time taken by the Court to prepare the decree before an application for a copy thereof is made shall not be counted in favour of the appellant, that is to say, the same shall not be excluded for the purpose of computing the period of limitation.

6. The question is really one of proper interpretation of sub-section (2) of Section 12 and the Explanation thereto. The object of all interpretation is to discover the intention of the Legislature, but such intention of the Legislature must be deduced from the language used, for it is well accepted that the beliefs and assumptions of those who frame the Acts cannot make the law. One of cardinal principles of interpretation of the statutes is when the language and grammatical construction of particular provision in the Statutes are clear and unambiguous, they should receive plain and natural meaning and in that no aid can be sought from the marginal note or the aims and objects set out in the Statement of Objects and Reasons. The Legislature must be deemed to have expressed its intention through the language of its enactments. Thus, having regard to this principle of construction we have to approach the question as to the true interpretation of sub-section (2) of Section 12 and the Explanation thereto. There are two or three aspects of this new provision contained in the 1963 Act. In the first place, it cannot be disputed that sub-section (2) of Section 12 is a substantive provision, which deals with exclusion of 'time requisite' for obtaining a copy of the decree in computing the period of limitation for an appeal. Secondly, the Explanation is clearly referable to the substantive provision contained in sub-section (2) and to no other part of Section 12, for the Explanation speaks of the time requisite for

obtaining "a copy of the decree or order" and that is dealt with substantively in sub-section (2) alone. The third aspect which becomes clear on a reading of sub-section (2) and the Explanation thereto and which is very important is that the two provisions deal with different topics or subject-matters. Whereas the substantive provision contained in sub-section (2) deals with the subject of computation of the period of limitation for an appeal the Explanation deals with the subject of computation of the time requisite for obtaining a copy of the decree or order and if this aspect that the two provisions deal with two distinct subjects is borne in mind it would, in our view, help in placing proper constructions thereon. In a sense it could be said that the phrase 'the time requisite for obtaining a copy of the decree' occurring in substantive provision of sub-section (2) is explained in the Explanation. The purpose of an Explanation is often to explain some concept or expression or phrase occurring in the main provisions and it is not uncommon for the Legislature to accord either an extended meaning or a restricted meaning to such concept or expression or phrase by inserting appropriate Explanation. It is in light of these aspects that the provisions of sub-section (2) of Section 12 and the Explanation thereto will have to be construed. The substantive provision of sub-section (2) provides that in computing the period of limitation for an appeal the time requisite for obtaining a copy of the decree shall be excluded and the Explanation which explains the concept of 'time requisite for obtaining a copy' states that in computing such 'time requisite' any time taken by the Court to prepare the decree before an application for a copy of the decree is made shall not be excluded. In other words, the plain and grammatical meaning of the Explanation, in our view, is that while computing the 'time requisite' for obtaining a copy of a decree, any time taken by the Court to prepare the decree or order before an application for a copy thereof is made shall be included.

As we have stated above, the Explanation does not deal with the topic of computing the period of limitation for an appeal but explains the concept of 'time requisite for obtaining a copy of the decree' and provides that while computing such time requisite the time taken by the Court to prepare the decree before an application for a copy thereof is made shall not be excluded. The expression 'shall not be excluded' must of necessity mean that the time taken by the Court for preparation of a decree "shall be included". In other words, such time will be excluded for computing the prescribed period of limitation for an appeal, the same being regarded as properly falling within the concept of time requisite for obtaining a copy. On a fair reading of the substantive provision together with Explanation it appears to us clear that the Legislature clearly intended that a litigant desirous of preferring an appeal against a decree should get the benefit of time taken by the Court to prepare the decree before he has made an application for a copy thereof and that such time taken by the Court shall be included in the time requisite for obtaining a copy.

7. It was urged by Mr. Choudhary that the opening words of the Explanation "In computing under this section" should be taken to refer to the topic of computing the period of limitation which is substantively dealt with by sub-section (2) and if the opening words were so understood, the meaning would be clear that in computing the period of limitation under the section the time taken by the Court to prepare a decree before an application for a copy thereof is made shall not

be excluded meaning thereby that such time taken by the Court to prepare the decree shall not be counted in favour of the party which would be in consonance with the Law Commission's recommendation and carry out the real intention of the Legislature. In our view, this would be a misreading of the Explanation, for the Explanation as indicated above clearly deals not with the topic of computation of period of limitation but with the topic of computing of the time requisite for obtaining a copy of a decree and it provides that while computing the time requisite for obtaining a copy of a decree any time taken by the Court to prepare a decree or an order before an application for a copy thereof is made shall not be excluded. If the legislature intended to implement and carry out the recommendation of the Law Commission and the purpose as indicated in the Statement of Objects and Reasons appropriate language could have been used while enacting the explanation the purpose could have achieved if the word "not" was omitted from the expression "shall not be excluded" while enacting the Explanation or it could have been achieved if the opening words of the Explanation ran "In excluding under this section the time requisite for obtaining a copy of a decree" but since such language has not been employed it is the duty of the Court to interpret the language actually employed and to determine the intention of the legislature from such language and since there is no ambiguity about the language actually employed, neither the recommendation of the Law Commission nor the aims and object as set out in the Statement of Objects and Reasons can be brought in aid or can be allowed to influence the natural and grammatical meaning of the Explanation as enacted by the Parliament. In this behalf it would be useful to refer to the provisions of Section 15 (2) and the Explanation thereto. Under Section 15 (2) it has been provided that in computing the period of limitation for any suit for which the previous consent or sanction of the Government or any other authority is required, in accordance with the requirements of any law for the time being in force, the time required for obtaining such consent or sanction shall be excluded and while explaining the concept of 'time required for obtaining the consent or sanction' an Explanation has been enacted as follows :-

"Explanation :- In excluding the time required for obtaining the consent or sanction of the Government or any other authority, the date on which the application was made for obtaining the consent or sanction and the date of receipt of the order of the Government or other authority shall both be counted."

This shows how appropriate language has been used by Parliament with a view to implement the Law Commission's recommendation contained in para. 44 of its report in the context of Section 15. Similarly with a view to implement the Law Commission's recommendation or carry out the purpose as stated in the Statement of Objects and Reasons in the context of Section 12 the Parliament could have likewise employed appropriate language by enacting the opening words of the Explanation to Section 12 (2) as "In excluding under this section the time requisite for obtaining a copy of a decree or an order". Instead the Explanation as enacted clearly 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. After all the intention has to be deduced from the enactment itself and if the language of the enactment is clear and unambiguous no external aid can be sought for placing an

interpretation thereon different from what is warranted by the natural and grammatical meaning of the language used. On a plain and grammatical construction of the substantive provision contained in Section 12 (2) read with the Explanation, therefore, it appears to us very clear that under the Explanation while computing the time requisite for obtaining a copy of a decree any time taken by the Court to prepare the decree before an application for a copy thereof is made shall not be excluded, which must mean that the same shall be included. In our view therefore, the contention urged by Mr. Deopujari on behalf of the appellant deserves to be accepted that on a proper interpretation of the relevant provisions contained in the substantive part of Section 12 (2) of the Act read with the Explanation thereto the appeals must be held to have been filed within time.

8. A large number of authorities were cited at the Bar in which the question of proper construction of the Explanation to Section 12 (2) of the Limitation Act, 1963, came up for consideration before various Courts in the country. Some of these are in favour of the construction which we have put on the Explanation while there are others which have taken a contrary view and we will deal with these authorities presently. Reliance was placed by Mr. Deopujari on the Full Bench decision of Patna High Court in the case of *State of Bihar v. Md. Ismail, reported in*³ where a majority view taken by the Full Bench supports the interpretation which we have placed on the relevant provisions of the Act. After referring to the state of law which obtained prior to the enactment of the 1963 Act this is what the Patna High Court (majority view) has observed with regard to Explanation to Section 12 (2) of the 1963 Act –

"The draftsman having used the word "excluded" at the end of each of the four sub-sections, appears to have thought fanciful to use the same word at the end of the explanation, to have as it were, a rhythmical effect. To counteract the natural meaning of "excluded", he used another negative form in the same expression so that the real meaning will not be lost. The expression "shall not be excluded" means undoubtedly "shall be included".

³ AIR 1966 Pat 1 (FB)

What is provided in the explanation "not to be excluded" (meaning to be included) is "any time taken by the Court to prepare the decree or order before an application for a copy thereof is made". If the application is made after the decree or order is prepared, then, the time taken by the Court for preparation of such decree or order cannot be more than what was actually taken for that purpose, irrespective of the date of application for copy. If the application is made before the decree or order is prepared, in that case, the time spoken of will be the period from the date of the judgment to the date of the application. The rest of the period taken by the Court to prepare the decree or order after the application will necessarily come within the time requisite for obtaining the copy. It is only about the period preceding the application for copy filed before the preparation of the decree, there was some doubt, according to some High Courts, if that period can be said reasonably to be requisite for obtaining a copy. To remove all those doubts, the explanation has now clearly and in simple language, provided that while computing the time

requisite for obtaining a copy of the decree or order, that period shall not be excluded in other words, that period will be included within the time requisite for obtaining a copy. If we read "shall be included" for "shall not be excluded" in the explanation, there cannot be the slightest doubt that the thing in which the inclusion is meant is the time requisite for obtaining a copy. If the opening words of the explanation would have been 'in computing the period of limitation' as it is in sub-sections (1), (2) and (4), the meaning would have been certainly different. But the language was purposefully different and the whole explanation is about the computation of 'the time requisite for obtaining a copy of a decree or an order.' In this case also strong reliance was placed upon the recommendation of the Law Commission as well as the object or purpose as mentioned in the Statement of Objects and Reasons for enacting the Explanation. But the contention based upon this aspect was negated by the majority judgment which observed as follows :-

"The recommendation of the Law Commission or the Objects and Reasons stated in the bill cannot alter the clear and unambiguous meaning of the actual enactment that the Parliament passed." In the concurring judgment delivered by Justice A. B. N. Sinha, the purpose of the Explanation has been explained in a particular manner. The learned Judge has observed as follows :-

"All the four sub-sections of Section 12 as also Sections 13, 14 and 15 deal with exclusion of time in computing the period of limitation, whereas the Explanation deals with connotation or meaning of the expression "time requisite for obtaining a copy of a decree or an order." There appears to be no justification for reading the words "shall not be excluded" as equivalent to saying "shall not be included". The legislature, in my view, has by inserting the Explanation sought to expand the meaning of the expression "time requisite for obtaining a copy of a decree or an order", and it is well settled that when any word, phrase or expression in any enactment is explained by the legislature, the Act has to be applied with the authoritative explanation of that expression, phrase or word, as the case may be for the very object of the authoritative explanation is to enable the Court to understand the Act in the light of the Explanation, and the construction of the Explanation must depend upon its terms, and no theory or hypothesis as to its purpose can be entertained unless it is to be inferred from the language used."

It may however, be stated that a dissenting view was taken by Justice U. N. Sinha and the only reason why the learned Judge was not inclined to accept the construction that the words "shall not be excluded" should mean "shall be included" was the general tenor of the section and the fact that the section dealt with the topic of exclusion of time in legal proceedings as its head- note indicated. The relevant portion of the reasoning of the learned Judge may be quoted :

"It has been urged by the learned Additional Standing Counsel that the Explanation should mean that the time taken by the Court to prepare the decree before an application for a copy thereof is made "shall be included" as time requisite, as the Explanation states

that it "shall not be excluded". I am not in a position to accept this contention, as Section 12 is not concerned with any inclusion of time at all. The section is concerned with exclusion of time, and, therefore, it is not possible to interpret the Explanation by holding that the expression, "shall not be excluded" means

"shall be included as time requisite for obtaining a copy of the decree"."

With respect, it must be observed that though it is true that all the substantive provisions contained in sub-sections (1) to (4) of Section 12 are not concerned with any inclusion of time but provide for exclusion of time in computing the period of limitation, the Explanation in terms deals with the topic of computation of the 'time requisite for obtaining a copy of the decree' and it is in the context of this topic dealt with by the Explanation that we have to construe the words "shall not be excluded" and the natural meaning of that expression would be as we have indicated "shall be included". We are in respectful agreement with the majority view.

9. Mr. Deopujari next referred to five decisions, two of the Calcutta High Court and one each of Orissa, Gauhati and Allahabad High Courts in which similar view has been taken - similar to the majority decision in the Patna case. In the case of *Dungarmall v. Rukma Kumar Jalal*, reported *in*⁴ the Calcutta High Court has opined that the words "shall not be excluded" in the Explanation mean that the time taken to prepare the decree or order shall be included in computing the period for obtaining certified copy. It was a case where an application for a certified copy had been made after the decree in question had been prepared and the Court took the view that in that event under the Explanation the time requisite for preparing a decree or an order was not to be excluded from the time required for obtaining a certified copy, which in other words means that the same will have to be included in the time for copy and thus necessarily the period of limitation for filing an appeal would get extended. The Calcutta High Court has indicated as to how the Explanation would apply in both the cases, namely, where an application for a copy has been made before the decree is drawn up and where it has been made after the decree has been drawn up and it has observed as follows :-

"Accordingly, if after the decree or order is prepared, an application is made for copy, then under the Explanation the time required for preparation of the decree or order, shall be not excluded from the time required for obtaining a certified copy, in other words it will be included in the time for copy and thus necessarily for limitation. Again, if application is made before the preparation of the decree or order, then time under the Explanation as being the requisite for copy, will include the time between the pronouncement of the judgment and the date of application

⁴ AIR 1970 Cal 443

for copy, and the rest of the period as may be taken by the Court to prepare decree or order will be the time required for obtaining the copy as provided in sub-sections (2) to (4) of Section 12.

The Explanation is clear and there will be no ambiguity if one remembers that while sub-

sections (2) to (4) of Section 12 of the Act relate to exclusion of time for obtaining certified copy of relevant judgment, decree or order, the Explanation concerns not with the limitation for appeal or application, but with the computation of time required for copy."

The next decision of the Calcutta High Court on which reliance was placed is reported in (*Nrishingha Murari v. Ajit Kumar*⁵). After quoting the Explanation given in Section 12 the Court observed as follows :-

"True effect of Section 12 is that the periods that come within each of the sub-sections in the Section have to be added to the period of limitation that is 90 days, for ascertaining the last date for filing the appeal. Effect of the Explanation is that the period that comes within it has to be added also when period under sub-section (2) is being added."

In *in the case of Koutuki Sabatani v. Raghu Sethi*⁶, this is what the Orissa High Court has observed :-

"It is legitimate to argue that if the Legislature wanted to adopt the view expressed by the Law Commission on this subject and felt the necessity, as did the Law Commission, to add an Explanation to Section 12 to resolve the conflict which then existed between the different High Courts, nothing was easier for them than to adopt the Explanation the Law Commission had suggested. But it appears to us that the Explanation which was actually added to Section 12 of the Act means just contrary to the suggestion of the Law Commission. It is argued that as in the Statement of Objects and Reasons of the new Limitation Act the reason for adding the Explanation to Section 12 was to make it clear that any delay in the office or the Court in drawing up of a decree or order before the application for a copy thereof is made shall not be excluded, the Explanation actually added must be interpreted in such a manner that it would be in accord with the Statement of Objects and Reasons and that therefore the correct interpretation of the Explanation should be to exclude, in computing the time requisite for obtaining a copy of the decree, the interval that elapses between the date of judgment and the date on which the application is made.

The meaning to be given to an Explanation must depend upon its terms and no theory of its purpose can be entertained unless it has to be inferred from the language used. We cannot also assume a mistake in an Act of Parliament. If we do so, we would render many Acts uncertain by putting different constructions on them according to our individual conjectures. The draftsman of the Act may have made a mistake ; if that be so, the remedy is for the Legislature to amend it."

Following the majority view of the Patna High Court the Court held that the time taken by

⁵ AIR 1971 Calc 213

⁶ AIR 1970 Oris 11

the Court for preparation of a decree before an application was made for copy thereof should be included in time requisite for obtaining copies for the purpose of filing an appeal against the judgment.

10. Reference may next be made to a decision in the case of *Mst. Shahiahan Begum v. Zahirul Hasan, reported in*⁷ where the majority view in the Patna decision was approved. A contention similar to the one which was raised before us by Mr. Choudhary based on the opening phrase of the Explanation was also raised before the Allahabad High Court and it would be interesting to refer to the relevant observations in that behalf which run as follows :

"It was urged on behalf of the respondents that the opening phrase of the Explanation, namely, "In computing under this section" means that the method of computation contemplated by the Explanation is with regard to computing the period of limitation provided by Section 12. This is a mis-reading of the Explanation. Section 12 (2) gives the method of computing the period of limitation for an appeal. One such method of computing is to find the time requisite for the copy. The Explanation deals with the manner of computation of the time requisite for obtaining the copy only. Since the method of computing the time requisite for obtaining a copy was not mentioned in sub-section (2) of Section 12, that is why the Explanation lays down the method of calculating the time requisite for obtaining a copy for purpose of "this Section".

A further contention that the phrase "before an application for a copy thereof is made" occurring in the Explanation was redundant was also raised before the Allahabad High Court and the manner in which the Court dealt with this contention will be pertinent. It has observed thus :-

"It was then urged that in this view, the phrase "before an application for a copy thereof is made" is redundant in the Explanation. We are unable to agree. This phrase has been mentioned in the Explanation to emphasize and clarify the pre-existing difference of opinion between the various High Courts, which was precisely on the point as to whether the time taken in drawing up the decree prior to the making of an application was or was not liable to be included in computing the period of time requisite for obtaining a copy. The Legislature has now said that this is a part of the time requisite for obtaining a copy. This is the significance of the phrase "before an application for copy thereof is made". If this phrase had not been there, the erstwhile controversy may well have remained unresolved."

11. It might be mentioned that the Gauhati High Court has not been uniform in its view on the proper interpretation of the Explanation to Section 12 (2) of the Act. There are two decisions of that Court, which express contradictory views. In *Simla Konglui Tangkhul v. Wangmazum Tangkhul, reported in*⁸ the Court has held that the time taken by the Court to prepare the decree from the date of judgment till the decree was signed should be included in computing the 'time

requisite' for obtaining the copy although the application for a copy of the decree was made after the decree was signed in other words, in this case

⁷ AIR 1972 All 511

⁸ AIR 1973 Gau 60

the learned Judge has followed the majority view expressed in Patna decision. In another case reported in the same volume in *Keshab Roy v. Malancha Debi*⁹, a contrary view has been expressed, namely, that the time taken by the Court to prepare a decree or an order prior to making of the application for a copy thereof cannot be excluded in computing the period of limitation, in taking this view Goswami, J., relied upon the opinion that had been expressed by the Division Bench of that Court in an earlier case reported in Assam LR (1972) Assam and Naga 8. The Division Bench had expressed its opinion in these words :-

"It is, therefore, manifest that the time taken by the Court before an application for a copy of the decree is made shall not be taken into account in calculating the time requisite for obtaining a copy. When the New Act is applicable we have to take a fresh look at the matter. The word 'obtaining' becomes significant. Etymologically 'obtain' means 'to get'; 'to procure by effort'.

Therefore the time requisite for obtaining a copy must be after the appellant or the applicant makes an effort by making an application for getting the copy. Hence giving effect to all the words appearing in the Explanation, the conclusion is irresistible that the time taken by the Court to prepare the decree or order prior to the making of the application for a copy cannot be excluded in computing the period of limitation."

It does appear from the above observations on which reliance was placed by Mr. Justice Goswami in *Keshab Roy's* case that the Division Bench seems to have overlooked the aspect that the Explanation does not deal with the topic of computing the period of limitation for an appeal but in terms deals with the topic of computing the time requisite for obtaining a copy and if this aspect of the Explanation as distinct from the topic dealt with in substantive provisions contained in Section 12 (2) is kept in mind, it will appear clear that the view expressed by the Division Bench on which reliance was placed by Justice Goswami would not be in accord with the language employed in the Explanation.

12. There were two or three decisions on which reliance was placed by Mr. Choudhari in support of his contention on the proper interpretation to be placed upon the Explanation to Section 12 (2) of the Act. The first important decision on which he relied was the decision of a single Judge of this Court, in the case of *Sitaram Dada v. Ramu Dada, reported in*¹⁰ where the learned Judge has taken the view that an appellant would be entitled only to the exclusion of the time between the date on which he applies for certified copies and the date on which those copies are ready for delivery and that the time between the date of the judgment and the date on which the decree was drawn up should not be excluded if the party has applied for certified copy of the decree after the decree is drawn. As we shall indicate presently, the entire judgment of the learned Single Judge has proceeded on what has been regarded as the object of the Explanation. Reliance was placed

before the learned Judge upon the judgment of the Full Bench of this Court reported in AIR 1952 Bombay 122 which had been rendered under the old Act and the learned Judge has observed as follows :-

"In that case the Full Bench has taken the view that it is not necessary for an

⁹ AIR 1973 Gau 83

¹⁰ AIR 1968 Bom 204

applicant 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 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 time between the date on which they applied for certified copies and the date on which those copies were ready for delivery."

The learned Judge has also indicated the evil which was sought to be combated by the enactment of Explanation in the new Act and this is what he has observed in that behalf :

"Permitting a litigant to wait 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."

With great respect, the entire reasoning of the learned Judge seems to be based upon the object with which the Explanation came to be enacted and again with respect it may be pointed out that the aspect as to what topic is dealt with by the Explanation seems to have been

overlooked. It may be that the object of the Explanation was to require an appellant to apply for a copy of the decree even if the decree was not ready. But even if that be the object, the question is as to what is actually provided for by the Explanation. It is true as has been stated in the above quoted observations that by the Explanation the Legislature has provided that 'the time taken by the Court to prepare the decree or order shall not be excluded' but such time shall not be excluded from what ? Not from the prescribed period of limitation but the same shall not be excluded from the 'time requisite for obtaining a copy'. If such time taken by the Court to prepare the decree is not to be excluded while computing the time requisite for obtaining a copy of the decree, it must mean the same shall be included within the time so requisite and the same shall be excluded under sub-section (2) in computing the period of limitation for an appeal. On the point of construction of the Explanation to Section 12 (2), therefore, it is not possible for us to accept the view taken by the learned single Judge in the Bombay decision referred to above.

13. There are three more decisions which have taken a view similar to the one taken by the learned Single Judge of this Court in the aforesaid decision. One of such decisions is reported in AIR 1973 Guahati 83 which we have already dealt with above. The second one is the decision of the Mysore High Court in the case of *Krishnappa v. Ramchandrasa*, reported in¹¹ The Division Bench of Mysore High Court in this case decided the question arising under the Explanation to Section 12(2) of the Act on the basis of undisputed position of law which arose on a consideration of certain provisions of the Civil Procedure Code and the Limitation Act. The Court pointed out that it was indisputable that period of Limitation for an appeal against a decree began to run from the date of decree, that the Limitation Act did not specify which that date should be, whereas the Civil Procedure Code expressly stated that the decree shall bear the date of the judgment and the legal position involved in the Rule contained in the Civil Procedure Code flew directly from the fact that under the Civil Procedure Code an appeal lay only against the decree and decree itself constituted the final adjudication of matters in dispute in a suit and the judgment was merely a statement of reasons in support of the decree and the decree whenever it might have been prepared and signed cannot possibly be made to bear a date other than the date of the judgment. It further pointed out that it was equally clear that the period that was excluded (other than the day on which the judgment pronounced of was pronounced) by sub-section (2) of Section 12 of the Limitation Act was only one period and the said period was described as "the time requisite for obtaining a copy of the decree" and not for preparing a decree or preparing a copy of the decree. The Court proceeded to observe as follows :-

"The effect of these two propositions is that there are no two periods for exclusion nor two dates for the commencement of the limitation and the only period which is capable of being excluded is the period which is related to conduct or attempt on the part of the appellant to obtain the copy of the decree. The commencement of that period can only be the date on which the appellant takes the first step for obtaining a copy of the decree and that step could only be the making of an application for certified copy.

Once the appellant makes such an application the mere fact that he has made an

application but has not been furnished with a copy, without any default on his part, is sufficient to entitle him to secure exclusion of the period from computing the period of limitation for appeal."

14. It is on the basis of the aforesaid reasoning that the Mysore High Court did not accept the majority view expressed in the Full Bench decision of the Patna High Court in the case of *The State of Bihar v. Md. Ismail*. After referring to the view of the learned single Judge of this Court in AIR 1968 Bombay 204, the Mysore High Court held that the real purpose of the Explanation to Section 12 was to clarify that in computing the time requisite for obtaining a copy of the decree the time taken by the Court for preparation of the decree could never be excluded. The party was entitled to exclude only the period which was directly related to his attempt to get the certified copy and not any other period.

¹¹ AIR 1973 Mys 234

The Explanation did not envisage that there were two periods of exclusion nor two dates for the commencement of the limitation. With great respect it may be pointed out that even in this case the aspect that the Explanation deals with the topic of computation of the time requisite for obtaining a copy and the same did not deal with the topic of computation of limitation for filing an appeal seems to have been overlooked. In our view, the Explanation makes it very clear that any part of the time taken by the Court for preparation of the decree before the date of an application for a copy thereof is made has not to be excluded while computing the time requisite for obtaining a copy. In this view of the matter, it would be difficult for us to subscribe to the view taken by Mysore High Court.

15. The last decision to which reference was made by Mr. Choudhary was the decision of Madhya Pradesh High Court in *Chunnihal Balaji v. State of Madhya Pradesh, reported in*¹² It is unnecessary to discuss this decision in detail but it will suffice to point out that the Madhya Pradesh High Court has followed the earlier view taken by the Judicial Commissioner, High Court, Nagpur in the case of *Umda v. Rupchand reported in*¹³ and it has taken the view that while enacting the Explanation to Section 12 (2) of the Act the Legislature seems to have accepted that view expressed in the said Nagpur decision. In other words, the question of proper interpretation of the Explanation inserted for the first time in the New Act of 1963 has not been considered afresh.

16. Having regard to the aforesaid discussion we are clearly of the view that on a plain and grammatical construction of the Explanation to Section 12 (2) of the Act the intention of the Legislature is clear, namely, that while computing the time requisite for obtaining a copy of a decree any time taken by the Court for preparation of the decree before an application for a copy thereof is made is not to be excluded, that is to say, such period will have to be included while computing the time requisite for obtaining a copy. It is also clear on a fair reading of the Explanation that irrespective of the question as to whether an application for a certified copy of the decree is made before drawing up of the decree or the same is made after the decree has been

drawn up and signed, the operative part of the Explanation must come into play that is to say, in either of the events while computing the time requisite for obtaining a certified copy the time taken by the Court for drawing up of the decree will have to be included in the time requisite for obtaining a copy. The language of the Explanation being absolutely clear and unambiguous, in our view, there is no scope for seeking the aid of any marginal note or the recommendation of the Law Commission or the object or purpose stated in the Statement of Objects and Reasons for introducing the Explanation. as has been pointed out by Allahabad High Court in AIR 1972 Allahabad 511 it is quite possible that this particular Explanation could be said to have been inserted for the purpose of resolving the erstwhile controversy which obtained in the case law which prevailed under the old Act. the controversy being whether the time taken in drawing up the decree prior to the making of an application was or was not liable to be included in computing the period of time requisite for obtaining a copy. We are conscious that the interpretation which we have placed upon the Explanation is in teeth of the recommendation of the Law Commissioner and the object stated in the Statement of Objects and Reasons for introducing the Explanation to Section 12 (2), but having regard to the language employed, which is very clear and unambiguous, it is our duty to give the

¹² AIR 1967 Mad Prad 127

¹³ AIR 1927 Nag 1 (FB)

plain and natural meaning to such language, for the proposition has been well enunciated by the Privy Council in the case of *Luchme Buksh Roy v. Runjeet Ram Panday*, reported in¹⁴ that Statutes of Limitation are in their nature strict and inflexible enactment, and ought to receive such a construction as the language in its plain meaning imports. While dealing with the contention raised before it that the particular case ought to be decided upon an equitable construction and not upon the strict words of the Statute the Privy Council has observed as follows :

"It has been said that this case ought to be decided upon an equitable construction, and not upon the strict words of the Statute, but their Lordships think that Statutes of Limitation, like all others, ought to receive such a construction as the language in its plain meaning imports. Statutes of Limitation are in their nature strict and inflexible enactments."

17. In view of the above discussion, our answer to the first question referred to us will be in favor of the appellants.

18. In view of the decision which we have reached on the first question, it is, we think, unnecessary to deal with or discuss the second question that has been posed for our decision.

19. In the result, the appeals will have to be registered and they may be placed for admission before the learned Single Judge taking Admission matters.

Reference answered.

¹⁴(18741 13 Beng LR 177 (PC)