TRAVENCORE COCHIN HIGH COURT

Kunju Kesavan

Vs

M.M. Philip

C.R.P. No. 510 of 1952

(Vithayathil, J.)

25.06.1953

ORDER

Vithayathil, J.

1. Plaintiff-respondent 1 in the Court below is the revision petitioner. The suit which is one for redemption of a mortgage was decreed on 8-2-1951. On the application of defendant 1 for copies of the judgment and decree for the purpose of filing an appeal from the decree the copy of the decree was given to him on 14-3-1951 and the printed copy of the judgment was given on 20-6-1951. He had applied for an urgent copy of the judgment on 17-2-1951, and he got the same on 19-3-1951. He filed the appeal on 26-6-1951, producing the printed copy of the judgment obtained on 20-6-1951 and the copy of the decree. If the period of limitation for filing the appeal is calculated on the basis of the copy of the judgment produced along with the appeal the appeal would be within time. But if time is calculated on the basis of the copy of the judgment obtained by defendant 1 on 19-3-1951 the appeal would be out of time. Plaintiff-respondent 1 contended in the Court below that the period of limitation should be calculated on the basis of the copy of the judgment obtained by defendant 1 on 19-3-1951 and that, therefore, the appeal was barred by limitation. He also contended that the Vakkalath filed on behalf of defendant-appellant 1 in the Court below was defective. The Court below repelled both these contentions by its order dated 25-6-1952. The revision petition is from that order.

2. The contention regarding the defects in the vakkalath was not pressed before me. The point that was urged was that the Court below went wrong in holding that the appeal was not barred by limitation. Relying on a decision of the Lahore High Court in - '*Mathela v. Sher Mohammad*[1]', learned counsel for the revision petitioner contended that the time requisite for obtaining a copy of the judgment mentioned in Section 12, Limitation Act is not necessarily the time requisite for obtaining the copy of the judgment produced along with the appeal and that it is the shortest time during which a copy of judgment could have been obtained. In that case Dalip Singh, J. dissented from the Full Bench ruling of the Madras High Court in - '*Thirumala Reddi v. Anavema Reddi*[2]', and held that the time requisite for obtaining a copy is the shortest time during which a copy could have been obtained and that it has nothing to do with the time taken by the appellant in obtaining the copy which he chooses to produce along with the memorandum of appeal. The

learned Judge observed thus :

> "I am unable to see why the word 'a' should be read as 'the' copy of the decree filed with the memorandum of appeal. To the contrary, in - '*Pramatha Nath v. William Arthur Lee*[3]*',* a Privy Council ruling, it was pointed out that the words 'time requisite' mean simply the time required by the appellant to obtain a copy of the decree assuming that he acted with reasonable promptitude and diligence."

The learned Judge, therefore, held that since the appellant had obtained another copy of the decree on an earlier date the period of limitation should be calculated on the basis of that copy. Becket J. agreed with this view. With great respect I find myself unable to agree with this view. I prefer to accept the view taken by the Full Bench of the Madras High Court in 'AIR 1934 Madras 306'. In that case it was held that the time requisite for obtaining a copy of the judgment is the time occupied in obtaining the copy which accompanied the memorandum of appeal and not an ideal lesser period which might have been occupied if the application for copy had been filed at some other date. Jackson J. observed thus :

> "The only concern of the Court is the time occupied in obtaining the copy which is filed with the appeal; not the time which might have been occupied in obtaining some other copy which is not filed with the appeal."

Reliance was placed by the respondent in that case on the following observation of the Privy Council in - '*Jijibhoy N.Surty v. T.S. Chettiar firm*[4]*',*

> "The word 'requisite' is a strong word ..... it means, 'properly required' and it throws upon the pleader for the appellant the necessity of showing that no part of the delay beyond the prescribed period is due to his default."

But Jackson, J. held that so long as the party applied for copy within the time prescribed by law it could not be said that there was default on his part. Pandalai, J. explained thus the observation of the Privy Council :

> "The objection is really an attempt to use certain observations of the Privy Council in - '*Jijibhoy N. Surty v. T.S. Chettyar Firm*',, in a manner not intended by the Board. The real point decided in that case was merely that the allowance of time requisite for getting copies of judgment and decree given by Section 12, Lim. Act, was not confined to appeals under Order 41 Rule 1, Civil Procedure Code, under which it is necessary to produce such copies, but applied also to appeals from the Original Jurisdiction of High Courts by whose rules copies of judgments and decrees are not required to be produced with the appeal memorandum. After deciding this point as above, their Lordships proceeded to refer to an observation of the High Court of Rangoon, which had
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> upheld the contrary view, that 'the elimination of the requirement to obtain copies of the

document was part of an effort to combat the dilatoriness of some Indian Practitioners.'

Their Lordships observe with respect to this that they would be unwilling to discourage any such effort but point out that all that can be done, as the law stands, is for the High Courts to be strict in applying the provision of exclusions. They further observe that the period to be excluded is that which is "requisite" and explain that word as meaning "properly required" and throwing upon the pleader or counsel for the appellant the necessity of showing that no part of the delay beyond the prescribed period is due to his default. These observations were made in a case in which the application for copies was made on the very day on which the judgment was pronounced and therefore apply only to dilatoriness of an applicant for copy after his application and in doing things necessary for obtaining them. What the Privy Council meant was that if such dilatoriness be alleged, the applicant (appellant) must show that in promoting his application and getting copies he did everything that the rules of the Court require to enable him to do so. The Board was clearly referring to the time taken for obtaining the copy on which the appeal was actually filed and not to any default such as the present respondent 9 is now urging against the appellant consisting of having another copy in his possession, on which also the appeal might have been filed but was not. This case therefore does not furnish any support to the objection."
The learned Judge further observed :

> "The respondents' argument, if allowed, would lead to great confusion and enquiries into alleged laches or dilatoriness of the appellant in respect not of copies produced with the memorandum of appeal but about other copies which he may have got and used for purposes proper or improper with which the Court has nothing to do, or not got by reason of neglect, such as non-payment of copying fees with which also the Court has no concern, provided the appellant is able to show that in respect of the copies actually produced by him, he is within time according to law, i.e., the time for appealing together with all the time requisite for obtaining the copy of judgment and decree. It is not denied that the appellant's omission to apply for a copy till the period fixed for appealing has nearly run out, cannot be used against him as a ground for not allowing him the full period requisite for obtaining the copy after he has applied. If so, why should the fact that he in fact obtained another copy be so used? I see no reason either in the letter of the law or in any of the decisions or inconvenience to adopt such a rule.

We have no power to restrict the time granted by the Statute by adding to it a limitation that, where an appellant has got more than one copy of judgment and decree, he ought, if he seeks exclusion of time for obtaining the copy, to use the first copy obtained by him. That is what the objection amounts to. As I understand it, all that the law requires and the decisions have laid down, is that, if an appellant invokes the aid of Section 12, Limitation Act, he will get only so much time allowed in excess of the proper time for appealing as is requisite, i.e., properly required, for obtaining the copies which he actually uses for the appeal."
This decision of the Madras High Court was followed by the Allahabad High Court in - *State v. Kashi Prasad*[5]*',* In that case AIR 1935 Lahore 682 was expressly dissented from.

3. Learned counsel for the Revision Petitioner referred also to the decision in - '*Babu Singh v. Mangat Rai*[6]*,'* - '*Narsingh Sahai v. Sheo Prasad*'[7]*,* and - '*Chunilal v. Dahyabhai*[8]*',* Those cases do

not deal with this question. The question considered in those cases was whether, when under the Code of Civil Procedure the appellant is bound to produce along with the memorandum of second appeal not only the copies of the judgment and decree of the first appellate Court but also a copy of the judgment of the Court of first instance, the appellant is entitled to exclusion of the time taken in obtaining the copy of the judgment of the Court of first instance over and above the time taken for obtaining the copies of the judgment and decree of the first appellate Court. It was held in those cases that since Section 12, Limitation Act provides for the exclusion of only the time requisite for obtaining a copy of the judgment on which the decree appealed from is founded the appellant would not be entitled to the exclusion of the time taken for obtaining a copy of the judgment of the Court of first instance also. That has nothing to do with the question to be decided in this case.

4. I, therefore, confirm the order of the Court below and dismiss the revision petition with costs.

Revision petition dismissed.

Cases Referred.

[1] AIR 1935 Lah 682
[2] AIR 1934 Mad 306 (FB)
[3] AIR 1922 PC 352
[4] AIR 1928 PC 103
[5] AIR 1950 All 486
[6] AIR 1927 Lah 192
[7] AIR 1918 All 389 (FB)
[8]32 Bom 14