

# NAGPUR HIGH COURT

Gulam Hussain

Vs

Mansurbeg

Misc. Civil Case No. 78 of 1948

(Sinha, C.J. Hidayatullah and Mudholkar, JJ.)

18.04.1952

## JUDGMENT

**Sinha, C.J.**

1. This case comes before this Full Bench on a reference by one of us (Hidayatullah, J.) and Choudhuri, J. A certificate of fitness was granted in favour of the present applicants on the 20th November 1951. The certificate itself was signed on the 26th November 1951. According to the office, the security deposit together with the charges for printing had to be deposited in this Court on or before the 7th January 1952. On that date the applicants made an application for extension of the time by two months. The matter having gone before the above Division Bench, a conflict of opinion in this Court was noticed on the question whether this Court has the power to extend the time prescribed by Order XLV, Rule 7 of the Code of Civil Procedure or not.

2. As early as '*Burjore V. Mt. Bhagana*'. it was held by their Lordships of the Privy Council that the word 'shall' in the rule corresponding to Rule 7 of Order 45 (then section 602 of the Code of 1877) was merely directory and not mandatory, and their Lordships approved of the action of the Judicial Commissioner in granting an extension of time on cogent reasons being advanced in support thereof. The law has since been amended and Order 25, Rule 7 is now slightly differently worded, creating two different periods during which the security deposit has to be made. At the same time, the effect of the ruling has not been completely lost, because the amendment was not made to get over that ruling. Further, Rule 9 of the Judicial Committee Rules of 1920 also provides for the Court's power to pass such order as the Court may deem fit in the interests of justice. That rule was interpreted on several occasions as giving an additional power to extend time in suitable cases. That rule has now been reproduced in Order XII, Rule 3 of the present Supreme Court Rules, and the same interpretation of the rule would, therefore, apply.

3. We may point out that almost all the High Courts in India, except probably Calcutta, have

taken the view that the time prescribed by Order XLV, Rule 7 of the Code of Civil Procedure can be extended if sufficient cause is made out for that

<sup>111</sup> Ind App 7 (Pc)

extension. We need not refer to those rulings. They can be found collected under that rule in any standard book on the Code of Civil Procedure.

4. We are, therefore, of opinion that time can be extended beyond that which is prescribed in the second part of Rule 7 of Order XLV. But we may say that a sufficiently strong case will have to be made out before this indulgence can be granted. Ordinarily, the position in Rule 7 must be adhered to, and as their Lordships stated in the case cited, very cogent reasons will have to be given before the Court will enlarge the time prescribed by the Code.

5. With these remarks, we answer the point in the affirmative. Let the papers be returned to the Division Bench for disposal as expeditiously as possible.

Answer in the affirmative.