

(1965) 07 RAJ CK 0001
In the Rajasthan High Court
Case No : Second Appeal No. 358 of 1959

Amar Chand

APPELLANT

Vs

Bach Raj and Another

RESPONDENT

Date of Decision : 30-07-1965

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 100, 101
Limitation Act, 1963 — Section 12

Citation : AIR 1966 Raj 111

Hon'ble Judges : D.S. Dave, C.J; Kan Singh, J

Bench : Division Bench

Advocate : Chandmal Lodha and H.M. Lodha, for the Appellant; Hastimal Pareekh, for the Respondent

Final Decision : Dismissed

Judgement

D.S. Dave, C.J.—This appeal came for hearing before a learned Single Judge of this Court on 23-10-64, but since an important question of law relating to the period of limitation was involved, he referred it to the Chief Justice to be laid before a Division Bench of the Court. This is how the case has come before us for hearing.

2. The appeal is directed against the judgment and decree of the District Judge, Balotra, dated 30-1-59, modifying the decree of Civil Judge, Jalore, dated 31-5-58. The plaintiffs-respondents filed a suit for the recovery of Rs. 8,221 as principal and Rs. 1,479 as interest, in all for Rs. 9,700 on the basis of their account books which were said to have been signed by the defendants. It was averred that the defendants Ganeshmal and his son Amar Chand had dealings with the plaintiffs' father for a number of years. After settling their accounts the defendants admitted their liability to pay an outstanding debt of Rs. 8,901 and executed a khata on 14-2-51. After certain payments the account between the parties was again settled on Kati Sud 15 Samvat 2010, and a balance of Rs. 8,221 was found outstanding against them. They again executed a khata for the

said amount which was payable with interest at the rate of Rs. 6 per cent per annum. The plaintiffs thus claimed the principal amount of Rs. 8,221 and Rs. 1,479 for interest.

The defendants denied the execution of the documents on which the suit was founded. It was further averred that two gold "badlas" costing Rs. 4,500 were pledged with the plaintiffs and that they were entitled to the deduction of that amount from the principal. The trial Court found that the documents on which the suit was based were executed by the defendants. At the same time, it was found in favour of the defendants that two gold "badlas" were pledged by them with the plaintiffs. The defendants were, therefore, credited with the said amount of Rs. 4,500 and after deducting the same from the claim of Rs. 9,700 a decree for Rs. 5,200 was passed against the defendants in the plaintiffs' favour. The defendants were content with the decree and filed no appeal. The plaintiffs, however, felt aggrieved on account of the deduction of Rs. 4,500 and, therefore, they filed an appeal in the Court of the District Judge, Balotra.

The learned District Judge found that in the documents on which the suit was based there was no mention about pledge of the said two ornaments. It was further observed by him that the defendants' oral version was not reliable because they had gone to the extent of denying the execution of the documents on which the suit was founded. It was further observed that the trial Court had committed an error in relying upon the oral statement of P. W. 2, Kundanmal and that he should not have been believed, because he was closely related to the defendants. The learned Judge, therefore, allowed the first appeal and decreed the plaintiffs' suit in full for Rs. 9,700. He also allowed to the plaintiffs interest pendente lite and future interest at the rate of Rs. 6 per cent per annum on the principal amount of Rs. 8,221. It is against this judgment and decree that the present appeal is directed.

3. The first and main contention raised by learned counsel for the appellant is that the appeal presented in the Court of the learned District Judge was time barred and that the learned District Judge has committed an error in holding the appeal to be within time.

4. In order to appreciate the point raised by the appellant's learned counsel it would be proper to state briefly a few facts which are no longer in dispute between the parties.

5. The judgment was pronounced by the trial Court on 31-5-58. That Court closed for summer vacations from the 1st of June 1958, and remained closed till 29th June 1958. Thus the judgment against which the appeal was filed in the Court of the District Judge was pronounced on the last working day of the Court and the vacations commenced on the following date. No light has been thrown about the exact time of the pronouncement of the judgment. The Court reopened on 30-6-58, and the plaintiff presented an application for obtaining copies of the judgment and decree on the same date, that is, 30-6-58. On that application an

order was passed to the effect that copies would be delivered on 7-7-58. Before 7-7-58, however, it was found by the office of the learned Civil Judge that the record of the case was already despatched to the Court of the District Judge, Balotra, and, therefore, the office expressed its inability to supply the copies asked for. On 8-7-58, the application was returned by the Court to the plaintiff with the observation that it should be presented before the District Judge, Balotra. The plaintiff then presented another application to the District Judge, Balotra, on 14-7-58, and the required copies were given to him by that Court on 18-7-58. The plaintiff then presented the appeal in the Court of the District Judge on 23-7-58.

6. It is common ground between the parties that if the period between 1-6-58 and 8-7-58 be excluded u/s 12 of the Indian Limitation Act, (hereinafter to be referred as the "Act"), then the appeal was well within time, but if that period could not be excluded under the law, then it was time barred. The question for determination, therefore, is whether the period between 1-6-58 and 8-7-58 could be excluded u/s 12 of the Act, as the time requisite for obtaining copies of the judgment and decree against which the appeal was filed.

7. It is strenuously urged by learned counsel for the appellant that the period between 1-6-58 and 29-6-58, during which the Court of the Civil Judge remained closed on account of the vacations could not be excluded u/s 12 of the Act, since it was period antecedent to the application for obtaining the copies and could not, therefore, come within the ambit of the words "the time requisite for obtaining a copy of the judgment and decree". In support of his argument learned counsel relies on the observations made by a Division Bench of this Court in Behari Dass Vs. Jagdish and Others, Learned counsel has, in particular, relied upon the following observation made therein:

"In our opinion, the time requisite for obtaining a copy of the decree cannot refer to any period antecedent to the appellant asking for a copy or to any period subsequent to its being ready for delivery."

It may be pointed out that in the said case the Civil Judge, from whose judgment the appeal was filed, pronounced the judgment on 5-3-49 and signed the decree on 10-3-49. The application for copies of judgment and decree was made on 12-3-49, the copies were delivered on 20-4-49, and the appeal was presented before the District Judge on 16-6-49. The Court of the District Judge was closed from 15-5-49 to 15-6-49, since 15th May was Sunday and thereafter there were summer vacations from 16-5-49 to 15-6-49.

According to the learned Judges the sole point for determination which arose in that case was "whether the period from the date of judgment till the date when the decree was drawn up and signed should be included in the "time requisite" for obtaining the copy of the decree. It was noted by the learned Judges that the leading case, on that point, of the Calcutta High Court, was Bani Madhub v. Matungini Dassi ILR 13 Cal 104 (FB), and it was followed by a Full Bench of the

Bombay High Court in *Murlidhar v. Motilal* AIR 1937 Bom 162 (FB). It was also noted that the same view was adopted by the High Court of Patna in *Gabriel Christian Vs. Chandra Mohan Missir and Another*, The learned Judges, however, accepted the view expressed by a Full Bench of Allahabad High Court in *Bechi v. Ahsan-Ullah* ILR 12 All 461 (FB), in preference to the view taken by the Calcutta, Bombay and Patna High Courts in the said cases.

8. It may be pointed out that, in the first instance, the said case is distinguishable from the present one, because the real question for determination in that case, as pointed out by the learned Judges themselves, was whether the period from the date of the judgment till the date when the decree was drawn up and signed by the trial Court could be included in the time requisite for obtaining the copy of the decree.

As we have already noted above, the facts of the present case are very different and the question for determination in the present case is whether in a case in which the judgment is pronounced by a Court on the last working day and the Court closes on the following day and an application for copies of judgment and decree is presented on the day when the Court reopens, the time intervening between the passing of the judgment and the reopening of the Court would be included within the term "time requisite" for obtaining the copy of the decree. Secondly, it may be pointed out that the view expressed by the learned Judges in the said case was shaken by the observations of their Lordships of the Supreme Court made in *Jagat Dhish Bhargava Vs. Jawahar Lal Bhargava and Others*, In that case the view expressed by the High Courts in ILR 13 Cal 104 (FB) AIR 1961 Pat 45 (FB) and *Jayashankar Mulshankar and Another Vs. Mayabhai Lalbhai*, pointedly came up for consideration before their Lordships and the views expressed therein were approved. It was held that "where a decree is not drawn up immediately or soon after a judgment is pronounced and a litigant feeling aggrieved by the decision applies for the certified copy of the judgment and the decree before the decree is drawn up, as he 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. 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."

In our humble opinion, as a general rule, it is true that the time requisite for obtaining a copy of the decree cannot refer to any period antecedent to the appellant asking for a copy, but this cannot be an inflexible rule and it would depend on the facts and circumstances of each case as to what should be considered to be the time requisite for obtaining a copy of the decree,

9. It may be pointed out that as early as in 1958, in the case of *Jijibhoy N. Surty v. Finn T. S. Chettyar* AIR 1958 PC 103, it was observed by their Lordships of the

Privy Council that

"the word requisite is a strong word; it may be recorded as meaning something more than the word required. It means "properly required" and it throws 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."

10. According to Section 12 of the Act, in computing the period of limitation prescribed for appeal, the day on which the judgment complained of is pronounced should be excluded. 31st May 1958, on which the judgment was pronounced in the present case would, therefore, be excluded according to the express language of Section 12 itself. On that point there is no disagreement between the parties. It is also not in dispute that the vacations started on the next following day, that is, 1-6-58 and continued upto 29-6-58. The plaintiff applied for copies on the very day on which the Court reopened, that is, on 30-6-58 and it was on 8-7-58 that his application was returned because the Court expressed its inability to deliver the copies since the record of the case was sent to the Court of the District Judge, Balotra. It is thus clear that the appellant did not waste a single day since the day the judgment was pronounced. The Court of the Civil Judge having been closed on the day following that of judgment, he could not possibly present an application for obtaining a copy till 29-6-58. As soon as the Court reopened, he presented an application. It cannot, therefore, be said that there was any kind of default on his part till 8-7-58.

11. A similar situation arose in the case of *Saminatha Ayyar v. Venkatasubba Ayyar* ILR 27 Mad 21. In that case also judgment was delivered in a case on the afternoon of the last Court day before the commencement of the Christmas vacation. Application for a copy was made on the day on which the Court reopened and an appeal was filed subsequently. The appeal would have been in time if the period during which the Court was closed was allowed to be deducted. It was contended in that case on behalf of the opposite party that, as no application for a copy was made before the Court closed, the appellant was not entitled to have the period, during which the Court was closed, deducted. It was held that the appellant was entitled to deduct the period during which the Court was closed and that such period, in the circumstances of the case, must be taken to be part of the "time requisite for obtaining a copy of the judgment." This view was followed by a Division Bench of the Patna High Court in *Debi Charan Lal v. Mehdi Hussain*, AIR 1916 Pat 317. In that case also the judgment was pronounced on 27-9-1913 and the Court was closed from 28-9-1913 to 31-10-1913. It was held that

"the whole of the time which elapsed from the delivery of the judgment to the reopening of the Court on 1-11-1913 was part of the time requisite for obtaining copies of the judgment and decree."

12. On *Abdul Ghaffor v. Mt. Rasulunnis* AIR 1922 Oudh 39, the same view was taken and it was held that

"the general rule is that the time requisite for obtaining a copy does not begin until an application for copies has been made. But, where the judgment is not delivered until the last day before vacation and the application is made on the first day, when the Courts reopen it is an exception to that rule and it is reasonable to include vacation as part of the time requisite for obtaining copy."

The same view has been taken by the High Court of Madhya Pradesh in *Lalta Prasad Vs. Shyammohan Laxminarayan and Others*,

13. We respectfully agree with the view taken in the above cases and hold that as a general rule, the time requisite for obtaining a copy of the decree would not refer to the period preceding the date on which an application for obtaining the copy of the decree is presented, but in a case where the judgment on which the decree is based and for whose copy the application is made, is pronounced on the last working day before the vacations and where the application for a copy is filed on the day the Court reopens, the period of vacation would come within the ambit of the "time requisite for obtaining a copy", because no application could be filed during that period and hence it was properly required for getting the copy.

14. Learned counsel for the appellant has pointed out that the Madras High Court has taken a contrary view in *Subramanyan v. Narasimham* AIR 1920 Mad 359 . It may be observed that in the said case the view taken in *Saminatha Ayyar's* case ILR 27 Mad 21, was not dissented from, but the said case was held distinguishable on facts. In *Subramanyan's* case AIR 1920 Mad 359 , the application for copy was not made for several days after the reopening of the Court and it was in those circumstances that it was held that "the applicant is not entitled to deduct the period of vacation, as time requisite for obtaining a copy u/s 12."

15. Learned counsel has next referred to *Q. Masilamani v. Arunga Mudali* AIR 1920 Mad 1025. It is a very small order written in a few lines and it appears that in that case also the observations made in *Saminatha Ayyar's* case ILR 27 Mad 21, were distinguishable on facts.

16. Thus, in the facts and circumstances of the present case we think that there is no force in the arguments raised by the appellant's learned counsel on the question of limitation and we agree with the learned District Judge that the appeal filed in his court was well within time.

17. The next contention raised by learned counsel for the appellant is that the learned District Judge has committed an error in holding that two gold "badlas" costing Rs. 4,500 were not pledged by his client with the respondents. It may be observed that, the question whether the appellants had pledged with the respondents two gold "badlas" and whether their cost was Rs. 4,500 is purely one of fact and the decision on that point having been given against the appellants by the first appellate Court, it cannot be raised in second appeal. The appellant's main reliance was on the statement of P. W. 2 Kundanmal. It was

conceded by the appellant's learned counsel that there was no mention about these ornaments in the documents on which the suit was founded, nor did the appellants produce any documentary evidence in support of their version. The first appellate Court found that P. W. 2 Kundanmal's statement was not worthy of credence since he was closely related to the appellant Amarchand being son of his brother-in-law Ganeshmal.

18. Thus, there is no force in this appeal and it is hereby dismissed with costs.