

(1968) 03 OHC CK 0006

In the Orissa High Court

Case No : Civil Revision No. 351 of 1965

Arjuna Charan Patnaik

APPELLANT

Vs

Purnanand Patnaik and Another

RESPONDENT

Date of Decision : 20-03-1968

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 20 Rule 7, Order 9 Rule 13
Limitation Act, 1963 — Article 123, 23

Citation : AIR 1968 Ori 207 : (1968) 34 CLT 472

Hon'ble Judges : G.K. Misra, J

Bench : Single Bench

Advocate : A.K. Das, K.B. Patnaik and D. Mohanty, P.K. Dhal, Amicus Curiae, for the Appellant; S. Misra, M. Patnaik and M. Mohapatra, for the Respondent

Final Decision : Allowed

Judgement

G.K. Misra, J.—On 19-12-1964 the suit was decreed ex parte, The decree was signed on 5-1-1965. On 30th of January, 1965, an application was filed under O. 9. Rule 13 C. P. C for setting aside the ex parte decree. The matter was heard and on 2nd of September, 1965, the ex parte decree was set aside subject to payment of costs. On payment of cost the suit was restored to file. The learned Munsif held that there was sufficient cause for the absence of the defendants on 19-12-1964 and that the application was within limitation as it was filed within 30 days from the date of the signing of the decree though it had been filed beyond 30 days from 19-12-1964 If the limitation runs from 19-12-1964 admittedly there was a delay of 12 days The Civil revision has been filed against the order dated 2-9-1965 setting aside the ex-parte decree

2. In revision, the finding of the learned Munsif that there was sufficient cause for absence of the defendants on the date of hearing is not assailed The only contention raised by Mr. Das is that the application for restoration is barred by limitation

3. Article 123 of the Limitation Act 1963 excluding the irrelevant portions runs

thus:

"Description of application Period of Limitation Time from which period begins to run.

123. To set aside a decree passed ex parte Thirty days The date of the decree....."

The learned Munsif was of opinion that the date of the decree was 5-1-1965 when the decree was sealed and signed. The application was filed within thirty days from this date. The main question for consideration in this revision is as to the meaning of the expression "the date of the decree" in Article 123 of the Limitation Act. There is no definition in the Act as to what "the date of the decree" means. Order 20, Rule 7 C P C lays down that the decree shall bear date the day on which the judgment was pronounced and, when the Judge has satisfied himself that the decree has been drawn up in accordance with the judgment, he shall sign the decree. The date of the decree under this rule is "the date of the judgment" and not "the date of the signing of the decree". The C P C and Limitation Act are cognate statutes and in the absence of any express definition to the contrary, O 20, R. 7. C P C would govern the meaning of the date of the decree in Article 123 of the Limitation Act.

4. Section 12 of the Limitation Act recites various cases of exclusion of time in legal proceedings. It does not cover an application for setting aside a decree under Order 9 Rule 12 C P C. There is therefore, no question of exclusion of time. In the aforesaid view, the application for setting aside the ex parte decree is barred by limitation. Section 5 of the Limitation Act makes provision for extension of the prescribed period in certain cases if the Court is satisfied that there is existence of sufficient cause for not making application within such period. Unfortunately in this case, no such application was filed. The question of examining the existence of sufficient cause u/s 5 of the Act was not accordingly considered in the Court below.

5. On the aforesaid view, the order of the learned Munsif setting aside the ex parte decree must be set aside and the civil revision is allowed. In the circumstances of the case parties are to bear their own costs throughout.

6. Though Mr. P.K. Dhal was unable to cite any decision directly in support of the point, he rendered his assistance in examining the question as an amicus curiae.