

(1989) 01 MAD CK 0066
In the Madras High Court

Arunachala Nadar

APPELLANT

Vs

Kalavathi Palanichami and Others

RESPONDENT

Date of Decision : 30-01-1989

Acts Referred:

Citation : (1989) 1 LW 84 : (1989) 1 MLJ 241

Hon'ble Judges : Ratnam, J

Bench : Division Bench

Judgement

Ratnam, J.—A.S.S.R. No. 89217 of 1988 has been preferred to this Court by the defendants in O.S.406 of 1986 Sub-Court, Madurai. The judgment in that suit was pronounced on 11-8-1988 and a copy application filed by the appellants in the proposed appeal on 22-8-1988, stamp papers were called for on 19-9-1988 and deposited on 21-9-1988 and the certified copies of the judgment and decree were made ready on 30-9-1988. Before this Court, the appeal A.S.S.R. No. 89217 was presented on 20-12-1988. Calculating the period of limitation prescribed for the preferring of the appeal as per the endorsements found on the certified copies of the judgment and decree, the last day for the preferring of the appeal in time was 19-12-1988, though it was actually presented on the next day i.e., 20-12-1988. On the office returning the papers raising the question how the appeal filed was in time, learned Counsel maintained that 19-12-1988, which was the last day for presenting the appeal in time, was a partial holiday and in view of the Explanation to Section 4 of the Limitation Act, 1963, the appeal presented on the next day i.e., 20-12-1988 was in time. Inasmuch as the office entertained a doubt whether the presentation of the appeal on 20-12-1988 could be regarded as having been done in time in view of the Explanation to Section 4 of the Limitation Act 1963, the matter has been placed before Court.

2. Mr. T.R. Mani, learned Counsel for the proposed appellants, contended that on 19-12-1988, the Court during a part of its normal working hours remained closed and that under the Explanation to Section 4 of the Limitation Act, 1963, the court should be deemed to be closed on that day so that the preferring of the appeal

the next day i.e. 20-12-1988 was in time as per Section 4 of the Limitation Act.

3. Consequent upon the adoption of five day-week pattern with effect from 1-7-1985, Standing Order No. 2 of the High Court, Madras, was amended as under:

Office Hours and Attendance: That High Court and the Office of the Registrar, will adopt five-day-week pattern introduced by Government in G.O.Ms. No. 550 P. & A.R. (Per.A) Department, dated 28-5-1985, declaring all Saturdays as Holidays. The Office will work from 10.00 a.m. to 5.30 p.m. but will be open for the transaction of the business from 10-15 a.m. to 4.00 p.m. The time for lunch interval will be from 1.30 p.m. to 2.00 p.m. The Honourable Judges will sit in court from 10.30 a.m. to 1.30 p.m. and from 2.15 p.m. to 4.15 p.m., on working days.

It is thus seen that the normal working hours of the Court is between 10-30 a.m., and 1.30 p.m. and from 2-15 p.m., to 4-15 p.m., though the office works from 10.00 a.m., to 4.00 p.m. By means of a notice in ROC.12948-A/88/03/ dated 14-12-1988 issued by the Registrar of the High Court, it was stated that the Honourable Judges will sit in court at 12.30 p.m. and the Office of the Registrar, High Court, Madras, including the office of the Official Assignee, High Court, Madras, will commence work at 12-16 p.m. on Monday, the 19th December 1988, owing to Vaikunta Ekadasi. The effect of this notice is that on 19-12-1988, during a part of its normal working hours, viz, between 10-30 a.m. and between 2-15 p.m. and 4-15 p.m. the court had remained closed between 10-30 a.m. and 12-15 p.m. u/s 4 of the Limitation Act, 1963 where the prescribed period for any suit, appeal or application expires on a day when the court is closed, the suit, appeal or application may be instituted, preferred or made on the date when the court reopens. An Explanation has been added to this Section to the effect that the court shall be deemed to be closed on any day within the meaning of this section, if during any part of its normal working hours, it remains closed on that day. The reason for the introduction of this Explanation was to make it clear that even a partial holiday in a court would fall within the purview of Section 4 of the Limitation Act, 1963, and to set at rest doubts and difficulties which had arisen as to what should happen if the court was not closed on a particular day fully, but was only closed partially during a part of its normal working hours. By the introduction of the Explanation, if during any part of its normal working hours a Court was closed on any day, it shall be deemed to be closed on that day. Thus, despite the factual closing of the court only for a part of the day during its normal working hours, by the Explanation. It is deemed that the court was closed for that day. Earlier we have referred to the notice to the effect that the Honourable Judges will sit in court on 19-12-1988 at 12-30 p.m. In other words, on that day, the court remained closed between 10-30 a.m. and 12-15 p.m. and if it was so close during a part of its normal working hours, viz, between 10-30 a.m. and 1.30 p.m. and between 2-15 p.m. and 4-15 p.m. by reason of the Explanation, the Court should be deemed to have been closed for

the whole day. In such an event, it was open for transaction of business as per its normal working hours u/s 4 of the Limitation Act, 1963. In this case, as on 19-12-1988, the court as closed in part during its normal working hours, by reason of the Explanation to Section 4 of the Limitation Act, 1963, already referred to, the court should be deemed to have been closed on 19-12-1988, and, therefore, the presentation of the intended appeal by the appellants in A.S.S.R. No. 89217 of 1988 on 20-12-1988 should be held to be in time. The office is, therefore, directed to treat the appeal as having been filed in time.