

(1942) 03 MAD CK 0023
In the Madras High Court

Avasarala Kamaraju Pantulu and Another	APPELLANT
Vs	
Balla Saramma	RESPONDENT

Date of Decision : 16-03-1942

Acts Referred:

Limitation Act, 1963 — Section 5

Citation : AIR 1942 Mad 604 : (1942) ILR (Mad) 868 : (1942) 55 LW 426 : (1942) 2 MLJ 104

Hon'ble Judges : King, J

Bench : Division Bench

Judgement

King, J.—This is an appeal by two would-be appellants in the Court of the learned District Judge of Bast Godavari, They attempted on the

21st of July, 1939 to obtain a favourable order from the learned District Judge u/s 5 of the Limitation Act for excusing a delay of 19 days in

presenting their appeal. The learned District Judge refused to excuse that delay and dismissed the petition and as a natural consequence of that

order the appeal was, rejected.

2. The argument put forward before me is that the application made by the appellants before the District Judge was really unnecessary, that there

was no delay to be excused at all, and that when they first presented their appeal on the 7th of July it was in Pact presented in time.

3. The facts and dates are as follows: The decree of the first Court against which the appellants desired to appeal was passed. on the 2nd May,

1939. A few days later the Court rose for the summner vacation, and both it and the District Court re-assembled after the summer vacation on the

19th. June. The period of limitation for appeal is thirty days, and thirty days of course expired before the 19th of June, but under the provisions of

Section 4 of the Limitation Act. the appeal could undoubtedly have been presented on the 19th of June. On that date, however, the appellants did not present, their appeal, but presented instead a copy application in the Court of first instance. They now maintain that inasmuch as they had a right of presenting the appeal on the 19th of June they had also a right of applying for a copy on that day, and then, availing themselves of the provisions of Section 12" of the Limitation Act. of adding to the period of limitation the time taken by them from the 19th of June to obtain the copy. In support of this position the appellants rely upon Pandharinath v. Shankar (1901) 25 Bom. 586 and Siyadut-un-nissa v. Muhammad Mahmmd (1897) 19 All. 342 and also upon a case in Saminatha Aiyar Vs. Venkatasubba Aiyar, . It seems to me that Saminatha Aiyar Vs. Venkatasubba Aiyar, is distinguishable from this case on the facts for, in that case the judgment against which the appeal was sought to be filed was pronounced on the very last day the Court was sitting, so that it was physically impossible for any application for a copy to have been made on the same day. I have also been referred to other decisions in Madras by the learned Counsel for the appellants, Donepudi Subrahmanyam Vs. Nune Narasimham and Others, and Ummathu Vs. Pathumma and Another, . In Donepudi Subrahmanyam Vs. Nune Narasimham and Others, , there is a brief reference to the Allahabad and Bombay decisions but on the facts of that case it was unnecessary to express any agreement with those decisions. In Ummathu Vs. Pathumma and Another, , one of the learned Judges appears to approve of the Allahabad and Bombay decisions but the other learned Judge doubts whether they are correct. In Masilamani v. Aruunga Mudali (1920) 12 L.W. 460, which has been cited by the learned Counsel for the respondent, another Bench of this Court refused to follow Saminatha Aiyar Vs. Venkatasubba Aiyar, unless the facts of that case were in all respects reproduced. It seems to me that in these circumstances there is no direct authority in Madras which is binding upon me and with respect I am in agreement with Ramesam, J., in Ummathu Vs. Pathumma and Another, , in holding that the Allahabad and Bombay decisions referred to by the learned Counsel for the appellants in support of this appeal are wrong.

4. In my opinion the real clue to the decision of this appeal is contained in a judgment of the Privy Council reported in Maqbul Ahmad v. Pratap

Narain Singh (1935) 68 M.L.J. 665 : L.R. 62 IndAp 80 : ILR 57 All. 242 (P.C.). That judgment contains an analysis of Section 4 of the

Limitation Act and shows that Section 4 by its very language cannot extend the period prescribed for the presentation of any suit or appeal or

application. Its purpose is merely to allow any suitor or applicant to file his suit or application on a date after the expiry of the prescribed period if

that period had expired while the Court was not sitting. It was therefore held in Maqbul Ahmad v. Pratap Narain Singh (1935) 68 M.L.J. 665 :

L.R. 62 IndAp 80 : ILR 57 All. 242, that there was no possibility of adding to the period of extension granted by Section 4 a further period which

was said to fall within Section 14. In my opinion although in the decision in Maqbul Ahmad v. Pratap Narain Singh (1935) 68 M.L.J. 665 : L.R.

62 IndAp 80 : ILR 57 All. 242 the Court was concerned only with the question of combining the periods u/s 4 and Section 14, the principles of

that decision will apply equally to any such attempt at combination. I have already had a somewhat similar case to deal with in a judgment which is

reported in N.A.S.T. Chidambaram Chettiar Vs. Venkatasubba Naik, . The question there was whether an acknowledgment u/s 19 made a day

on which the Court re-opened and therefore on the day on which a suit could have been filed u/s 4 was an acknowledgment which would avail to

extend the period of limitation. I held in that case that it could not have that force. Section 4 presupposes by its very language that the prescribed

period had already expired, and u/s 19 it was necessary that the acknowledgment should be made within the prescribed period. It seems to me

that the same principles will apply to Section 12 as they do to Sections 14 and 19. Section 12 says that ""in computing the period of limitation

prescribed"" for any suit, appeal or application, the day from which such period is to be reckoned shall be excluded and also the time requisite for

obtaining a copy of the decree. Section 12 therefore assumes that the time requisite for obtaining the copy of decree must begin before the

prescribed period is over. It has already been held that u/s 4 the right to present a suit or appeal or application on the day upon which a Court re-

opens is a special right which cannot extend the period of limitation prescribed in the Act. The section pre-supposes that that period has already

expired. It seems to me therefore that u/s 4 the only privilege which is granted to the suitor or appellant is that he may file his suit or appeal on that

particular day and that particular day alone. If he delays in making his application for a copy until that day, then he is applying for a copy when the period of limitation has already expired and following the principles laid down in *Maqbul Ahmad v. Pratap Narain Singh* (1935) 68 M.L.J. 665 :

L.R. 62 IndAp 80 : ILR 57 All. 242 (P.C.), I must hold that the extension which is granted to him by the application of Section 4 cannot be

combined with the extension which he seeks u/s 12. It is clear, therefore, to my mind that the appeal in question was time barred when it was

presented on the 7th of July and the view of the appellants themselves that it was necessary for them to apply u/s 5 of the Limitation Act was the

correct one.

5. The question then arises whether the learned Judge was right in refusing to excuse the delay. On this point it is contended for the respondent that

no second appeal lies in this case and it seems to me that, strictly speaking, that is so, inasmuch as there has been no first appeal in existence; and

this appeal is not really an appeal against an order of the District Judge dismissing the appeal but an appeal against an order refusing to excuse the

delay, against which no second appeal is provided. I have, however, heard the legal arguments involved in this case because they appeared to me

to be important, and there is no reason why I should not treat this second appeal as if it were a revision petition. Having made that decision I am

now unable to interfere with the learned District Judge's order. It is a matter for his discretion to decide whether he should excuse the period of

delay or not, and when he has decided that no sufficient grounds existed for excusing the delay I do not think it is within my powers of revision u/s

115, CPC to interfere with that decision.

6. In the result the appeal must fail and is dismissed with costs.