
(1941) 08 CAL CK 0033
In the Calcutta High Court

Balchand Prohit

APPELLANT

Vs

Sir Bejoychand Mahtab Maharajadhiraj of Burdwan

RESPONDENT

Date of Decision : 21-08-1941

Acts Referred:

Limitation Act, 1963 — Section 5

Citation : AIR 1942 Cal 606

Hon'ble Judges : R.C. Mitter, J;Akram, J

Bench : Full Bench

Judgement

R.C. Mitter, J.—These two appeals are on behalf of the defendant in a suit for ejectment. It is not necessary for us to enter into the merits of the appeals because of a preliminary point raised by the respondent's Advocate Mr. Mitra, which preliminary point we consider to be a sound one. The judgment in the second miscellaneous appeals to this Court was delivered by S.K. Ghose J. on 23rd June 1937. The memoranda of appeals filed under Clause 15 of the Letters Patent were actually lodged in this Court on 17th February, 1938. Prima facie the appeals are barred by time. The last date for preferring the appeals expired on 23rd July 1937. It appears that when S.K. Ghose J. delivered his judgment there was no prayer made to him for leave to file appeals under the Letters Patent. An application for review of judgment was filed on 2nd November 1937. It was summarily rejected. Later on in the beginning of the year 1938, an application was put in by the appellant in person praying for leave to file appeals under Clause 15 of the Letters Patent. As time for appealing under the Letters Patent had long passed a prayer was made u/s 5, Limitation Act, for extension of the period for filing the appeals. That application was moved before S.K. Ghose J. on 21st January 1938. No notice of the said application was given to the respondent, although by reason of the lapse of time he had acquired a valuable right. On the said date S.K. Ghose J. made an ex parte order which runs as follows:

Leave is given to the petitioner to appeal under Clause 15 of the Letters Patent

read with Section 5, Limitation Act.

2. So far as the matter of leave is concerned, it could have been given ex parte, but according to our reading of this order Ghose J, also extended the period of limitation for filing Letters Patent appeals u/s 5, Limitation Act, without giving the respondent an opportunity to be heard on the point as to whether it was a fit case in which extension of the period of limitation should be granted or not. The memoranda of appeals were, however, not presented on 21st January 1938. They were presented on 17th February 1938, and on that date also another ex parte order was passed, ex parte in the sense without giving any opportunity to the respondent to oppose the said application. The order was in these terms:

Petitioner in person. The petitioner is permitted to file the Letters Patent appeals to-day. Let the appeals be registered.

3. We have grave doubts as to whether the learned Judge, who heard the second miscellaneous appeals sitting singly had any jurisdiction to entertain an application for the extension of the period of limitation for filing Letters Patent appeals. Our present view is that that would be a matter for the Division Bench that may be constituted by the Chief Justice for the purpose of hearing Letters Patent appeals, and if there was no such bench then constituted, it would be for the Chief Justice to constitute a Division Bench to deal with the application for extension of time. But we do not propose to rest our decision on this view. In this case the orders passed by Ghose J. on 21st January 1938, and 17th February 1938, are irregular orders, for no opportunity was given to the respondent to present his case with regard to the prayer of the appellant for extension of the period of limitation. Those orders must be vacated. The position, therefore, is that there is still the application u/s 5, Limitation Act, pending. If there had been any prima facie case made therein for extension of the period of limitation we would have directed the appellant to give notice of this application to the respondent's advocate in order to enable him to meet the allegations made in that application which were made grounds for extension of the period of limitation. But on reading that petition, even if the allegations made therein be established, they would not be sufficient for the purpose of extending the period of limitation. Even if the period during which the application for review was pending was excluded in computing the period of limitation, the appeals would still be hopelessly out of time. The only other allegation made is in para. 6 of the petition which says:

That the petitioner being a petty clerk in service at Kurseong and with a view that his heavy grievance may get a proper redress if the case which is badly confused is comprehended by the Court beg to approach that the following records of the case be called for interest of justice. The petitioner is willing to pay any deficiency of court-fee and to comply with any orders made for him on being informed to that effect.

4. Then he mentions the documents which he required. There is no suggestion

there that by reason of his poverty he was unable to procure the necessary court-fees which would be required on the memoranda of appeals. The allegations which he made therein although not couched in proper terms, were allegations which he made in support of his prayer for calling for further records. We accordingly uphold the preliminary point raised by the respondent's advocate and dismiss these two appeals on the ground that they are barred by time. We make no order for costs.

Akram, J.

5. I agree.