

(1966) 02 P&H CK 0011
In the Punjab And Haryana At Chandigarh
Case No : S.T. Ref. No. 6-D of 1958

Chiranji Lal and Bros.

APPELLANT

Vs

The State of Delhi

RESPONDENT

Date of Decision : 23-02-1966

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 15, 39
Land Acquisition Act, 1894 — Section 18
Limitation Act, 1963 — Section 10, 11, 12, 13, 14

Citation : (1966) 18 STC 240

Hon'ble Judges : S.S. Dulat, J; S.K. Kapur, J

Bench : Division Bench

Advocate : P.C. Khanna and M.K. Chawla, for the Appellant; S.N. Shankar and N. Srinivasa Rao, for the Respondent

Judgement

S.K. Kapur, J.—The following three questions of law have been referred by the Chief Commissioner, Delhi, by his order dated 30th October, 1958, u/s 21 of the Bengal Finance (Sales Tax) Act, 1941, as extended to the Union territory of Delhi :-

(a) Whether Section 29 of the Limitation Act applies to revision applications under the Bengal Finance (Sales Tax) Act, 1941, as extended to Delhi.

(b) If the answer to (a) be in the affirmative, does Section 29 of the Limitation Act enlarge the scope of Section 12(2) of the said Act, so as to make it applicable to revision, which is not a proceeding mentioned in that section.

(c) Whether apart from Sections 29 and 12(2) of the Limitation Act, the mere requirement of Rule 62 under the Bengal Finance (Sales Tax) Act, 1941 as extended to Delhi, that every revision application should be accompanied by a copy of the order, is sufficient justification by itself to exclude the time taken in obtaining such a copy, for the purposes of calculating limitation.

2. The circumstances giving rise to this reference are that Chiranji Lal and

Brothers (hereafter referred to as the assessee) filed a revision petition before the Chief Commissioner, Delhi, on 5th February, 1958, against an order of the Sales Tax Commissioner dated 21st November, 1957. The Chief Commissioner by his order dated 18th July, 1958, held that the revision was barred by time, having been filed after the expiry of sixty days, the period prescribed for filing revision petitions. The Chief Commissioner has not given detailed reasons in the judgment and has only relied on two earlier orders passed by him in *D.C.M. v. The Sales Tax Commissioner and Fauja Singh and Ors. v. The Sales Tax Commissioner*. We have had no access to those decisions of the Chief Commissioner, but from the nature of the questions referred to us it appears that the Chief Commissioner took the view that though the rules framed under the Bengal Finance (Sales Tax) Act, 1941, as extended to the Union territory of Delhi (hereafter referred to as the said Act), required a certified copy of the order of the Sales Tax Commissioner to accompany the revision petition, but still the time requisite for obtaining such copy was not to be excluded in computing the period of limitation.

3. Rule 62 of the said Act requires that the memorandum of appeal shall be accompanied by a certified copy of the order appealed against. Rule 66(1) makes the provisions of Rule 62 applicable *mutatis mutandis* to every application for revision. Under Rule 66(2) the period prescribed for filing a revision application is 60 days from the date of communication of the impugned order. Proviso to Sub-rule (2) of Rule 66 confers power on the concerned authority to extend time, on sufficient cause being shown, for resenting the application. On 17th January, 1959, an explanation was added to Rule 66, reading: "In computing the period of limitation prescribed in this rule for revision of an order, the time requisite for obtaining a copy of the order sought to be revised shall be excluded." Since we are concerned with the period prior to the introduction of this explanation, it is common ground between the parties that the questions have to be answered on the footing that that explanation does not exist.

4. So far as the first question is concerned, it has rightly been conceded on behalf of the State that Section 29 of the Limitation Act applies to revision applications under the said Act. This question, therefore, must be answered in the affirmative.

5. The most serious controversy at the Bar has been with reference to the second question. On behalf of the State it is said that though by virtue of Section 29, the provisions of Section 12 of the Limitation Act become applicable but still Sub-section (2) of Section 12, being in terms limited to an appeal, an application for leave to appeal and an application for a review of judgment does not apply to a revision application, and, consequently, the time requisite for obtaining a copy of the order, sought to be revised, cannot be excluded. There can be no doubt that if the rules require a certified copy to accompany a revision petition and yet the time requisite for obtaining the copy is not to be excluded, it would obviously result in serious hardship to the applicants in revision. The period of limitation

prescribed is 60 days, and yet obtaining of the copy itself may take much longer.

6. High Courts have attempted to resolve this difficulty in various ways. In *Muhammad Hayat Haji Muhammad Sardar v. Commissioner of Income Tax, Punjab and N.W.F.P.* AIR 1929 Lah. 170 a Division Bench of the Lahore High Court decided that in computing the period of limitation for an application u/s 66(3) of the Income Tax Act, for requiring the Commissioner of Income Tax to refer certain questions of law to the High Court, the time requisite for obtaining certain copies was to be excluded by virtue of Section 29 of the Limitation Act. This principle was applied by the Calcutta High Court to an application u/s 21 of the Bengal Finance (Sales Tax) Act, 1941, requiring the Board to state a case to the High Court in *India Ice and Cold Storage Co. Limited v. The Member, Board of Revenue, West Bengal* 53 C.W.N. 191. In coming to this conclusion, the Bench of the Calcutta High Court followed the Lahore High Court decision in *Muhammad Hayat Haji Muhammad Sardar's* case AIR 1929 Lah. 170. In *Mohan Lal Hardeo Das Vs. Commr. of Income Tax*, the Patna High Court held, following the above-mentioned Lahore decision, that in computing the period of limitation for an application for reference by an assessee u/s 66(3) of the Income Tax Act the time requisite for obtaining copies was to be excluded on general principles and in view of Section 29 of the Limitation Act.

7. In *The Standard Type Foundry Vs. Chebolu Venkataramaniah*, a slightly different approach was adopted. The Madras High Court was considering the question of applicability of Section 12(2) of the Limitation Act to a petition filed u/s 73 of the Madras Village Courts Act. It was held that a revision petition under the said provision, namely, Section 73, should be regarded as being comprehended within the term "appeal" occurring in Section 12(2) of the Limitation Act. Reliance was placed on a Full Bench decision reported as *P.P.P. Chidambara Nadar Vs. C.P.A. Rama Nadar (deceased) Pichaimani alias Arunachalam by guardian Thillai Ammal as L.R. of the deceased and Others*, .

8. Now I proceed to consider some of the decisions which have taken a contrary view. In *Doma Sao Kishun Lal Vs. State of Bihar*, it was held that in computing the period of limitation for an application to the Board of Revenue for referring certain questions to the High Court, the time spent in obtaining certified copies could not be excluded. I would like to mention here that in this reference we are concerned with the applicability of Section 12(2) to a revision application and not to a reference application. As I shall discuss hereafter it is possible that different considerations may arise in the two types of applications. It is, however, not necessary to express any view about the position with respect to the reference applications, since I am of the opinion that this question should be answered by saying that "application for revision" provided in the said Act is comprehended within the term "appeal" in Section 12(2) of the Limitation Act.

9. One finds a very elaborate discussion on the subject in a Full Bench decision of the Allahabad High Court, reported as *Gopaldas Sarvadaya Vs. Commissioner of Sales Tax, U.P.*, . *Bhargava, J.*, held that in computing the period of limitation for

a reference application u/s 11(1) of the U.P. Sales Tax Act, an assessee is not entitled to exclude the time requisite for obtaining a copy of the order u/s 10(3). This was so decided by the Allahabad High Court on the ground that though Section 12 of the Limitation Act was applicable to proceedings under the Sales Tax Act, but the scope of Section 12(2) was limited to "an appeal, an application for leave to appeal and an application for a review of judgment".

10. The decision of the Lahore High Court in Muhammad Hayat Haji Muhammad Sardar's case AIR 1929 Lah. 170 was not considered to be an authority relevant to the controversy on the ground that the limitations expressed in Section 12(2) were not considered by that High Court.

11. It would be pertinent to point out here that the arguments in this reference have proceeded before us on the assumption that Section 29, though applicable, does not extend the scope of Section 12(2) beyond "an appeal, or application for leave to appeal and an application for a review of judgment", and the words : "any suit, appeal or application" in Section 29 are not meant for the purpose of enlarging the scope of sub- Section (2) of Section 12 of the Limitation Act, but merely for the purpose of describing the nature of the proceedings to which Sections 4, 9 to 18 and 22 are to be applied. In Hari Krishan v. State of Pepsu AIR 1958 Punj. 490 a Division Bench of this Court held that Section 12(4) of the Limitation Act does not apply to an application u/s 18 of the Land Acquisition Act, and consequently, the applicant is not entitled to exclude the time taken in obtaining a copy of the award. Similarly, in Jankibai Tukaram Vs. Nagpur Improvement Trust, Nagpur, it was held that Section 12(2) of the Limitation Act does not entitle an applicant: to exclude the time spent in obtaining a certified copy in computing the period of limitation for an application for reference u/s 18 of the Land Acquisition Act. It was further held that such an exclusion of time was not possible even u/s 12(4) of the Limitation Act.

12. It is needless to multiply the authorities though some more do exist, for the decisions referred to above sufficiently represent the different points of view. Without expressing any opinion on the merits of the various view points, I would consider it wise to dispose of this controversy on the short ground that when the said Act confers a right of revision, that revision must be included in the expression "appeal" in Section 12(2) of the Limitation Act, and consequently, the time requisite for obtaining certified copies of the order sought to be revised, must be excluded u/s 12(2) read with Section 29 of the Limitation Act. The Limitation Act does not prescribe any period of limitation for revision petitions. Consequently, revision petitions, as such, have not been dealt with under the Limitation Act and only an appeal and certain applications have been referred to in Section 12(2). That, however, appears to be no ground for holding that revisions provided in other statutes should not be comprehended in the term "appeal" in Section 12(2). Generally speaking, the appellate jurisdiction is exercised by a superior court in revising the action of an inferior court, and an appeal implies a resort from an inferior tribunal to a superior one for the purpose

of revising a judgment of the former. The term "appeal", understood in its common acceptation, only carries a function to revise or reject the proceedings in a cause already instituted. It has no doubt sometimes a strictly technical definition, but that technicality must arise as a result of an express provision or a clear implication in the relevant statute. The expression is frequently used as embracing all kinds of disputes for the review of causes. In other words, there is no inherent limitation in the word "appeal" and generally speaking it embraces all proceedings whereby a superior court is called upon to review, revise, affirm, reverse or modify the decision of an inferior court. What then can be a justification for saying that "revision" in the said Act is used in its narrow technical sense as comprehending something other than "appeal" ? I think, the answer must be in the negative. In *Subramania Pillai v. Seethai Ammal and Anr.* 12 Ind. Cas. 38 a Division Bench of the Madras High Court, while discussing the nature of the order passed u/s 622, corresponding to Section 39 of the Letters Patent said : "when a question was raised whether an order passed u/s 622, corresponding to Section 15 of the present Civil Procedure Code, was passed in the exercise of the High Court's original or appellate jurisdiction it involved no straining of language to decide that the word "appeal" used in Sections 15 and 39 was used in a comprehensive sense so as to include both what is described technically as an appeal as also the common law writs of error." Again in *Secretary of State v. British India Steam Navigation Co.* 9 Ind. Cas. 183 a Division Bench of the Calcutta High Court declined to accept the contention that a narrow interpretation should be placed on the expression "made on appeal" in Section 39 of the Letters Patent and its application excluded from all cases in which the order is made in exercise of revisional jurisdiction.

13. The learned counsel for the State is, no doubt, right when he says that the fixation of periods of limitation must always be to some extent arbitrary; that in construing such provisions equitable considerations are out of place, and that the strict grammatical meaning of the words is the only safe guide, but even adherence to this rule does not in any manner affect the construction of the word "appeal" occurring in Section 12(2). In this view, I am of the opinion that the word "revision" in Rule 66 of the Rules framed under the said Act, as then in force, is comprehended within the term "appeal" in Section 12(2) of the Limitation Act, and, consequently the time requisite for obtaining a certified copy of the order sought to be revised is to be excluded in computing the period of limitation prescribed for the revision. In the result, the second question must be answered as under :-

Section 29 of the Limitation Act does not enlarge the scope of Section 12(2) of the said Act, but the petitioner is entitled to exclude the time spent in obtaining the certified copy of the impugned order, u/s 12(2) of the Limitation Act.

14. There remains then the third question. The mere requirement that a revision petition should be accompanied by a certified copy of the order, does not by itself permit a petitioner to exclude the time requisite for obtaining such a certified

copy in computing the period of limitation. This question must, therefore, be answered in the negative.

15. I would answer the reference accordingly, but leave the parties to bear their own costs.

S.S. Dulat, J.

16. I agree.