

(1965) 09 MP CK 0003

In the Madhya Pradesh High Court

Case No : Second Appeal No. 475 of 1965

Chunnilal Balaji and Others

APPELLANT

Vs

State of Madhya Pradesh

RESPONDENT

Date of Decision : 15-09-1965

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 20 Rule 7
Limitation Act, 1963 — Section 12, 5

Citation : AIR 1967 MP 127 : (1967) ILR (MP) 789

Hon'ble Judges : Shiv Dayal, J

Bench : Single Bench

Advocate : R.K. Pandey, for the Appellant; R.J. Bhawe, Government Advocate, for the Respondent

Final Decision : Dismissed

Judgement

Shiv Dayal, J.—This is a second appeal from the judgment and decree of the District Judge Khandwa. The question is whether this appeal was filed within the prescribed limitation.

2. Material dates are these:

6-10-1964 Date of judgment.

9-10-1964 Date of signing the decree

24-3-1965 This appeal was filed.

Thus the appeal was filed on the 169th day of the judgment

3. As regards the time spent in obtaining the copies of the judgment and decree, the material dates are

12-10-1964 Application made. 28-12-1964 Copies supplied (That was also the date on which the applicant was directed to appear for obtaining copies)

Thus, the time spent in obtaining copies is 78 days Excluding this time from computation, the appeal was filed on the 91st day so that it is barred by one day.

4. If the time intervening between signing of the judgment and signing of the decree, which is 3 days, is also excluded, the appeal if, within time. It was held in *Bhagwant v. Liquidator of Co-operative Society* 1955 Nag LJ 286 (FB), that the appellant was entitled as of right to ask for the exclusion of the period during which the Court did not draw up the decree, even though he did not apply for a certified copy of the decree before it was drawn up, unless there was some neglect on his part to take some action he was bound to take. But that ceased to be good law on 1st January 1964, when the Limitation Act, 1903, came into force (the Act was published in the Gazette of India dated 5th October 1903). The following explanation has been added to Section 12 of the new Act.

"In computing under this section the time requisite for obtaining a copy of a decree or an order, any time taken by the Court to prepare the decree or order before an application for a copy thereof is made shall not be excluded."

Now, the law is that in spite of the provisions contained in Order 20, Rule 7, Civil Procedure Code, which enacts that the date of the decree shall be the date of the judgment, if the decree appealed from is signed on a date subsequent to the date of the judgment: (1) the period between the date of the judgment and the date of signing the decree shall be excluded, if the appellant had applied for a copy of the decree before the decree was signed, but (2) the period between the date of the judgment and the date of signing the decree shall not be excluded, if the appellant applied for a copy of the decree after the decree had been signed. Thus, the view taken in AIR 1927 1 (Nagpur) , has been accepted by the legislature.

5. Learned counsel has applied for condonation of the delay on the ground that he had been relying on the Full Bench decision in *Bhagwant* 1955 Nag LJ 286 (FB) (supra). But their Lordships have recently observed in *A.D. Partha Sarathy Vs. State of Andhra Pradesh*, that the Limitation Act of 1963 having been in force for more than a year the delay could not be condoned. The delay cannot, therefore, be condoned in this case.

6. It is also reported by the office that deficit court-fee was paid on 9th July 1965, so that the appeal was barred by 107 days. The deficiency was of Rs. 8. That question need not be gone into.

7. This appeal is dismissed as barred by time.