

(1999) 04 CAL CK 0021
In the Calcutta High Court
Case No : G.A. No. 1864 of 1997

Dilip Kumar Chatterjee

APPELLANT

Vs

National Jute Manufactures Corporation Ltd. and Others

RESPONDENT

Date of Decision : 26-04-1999

Acts Referred:

Calcutta High Court (Original Side) Rules, 1914 — Rule 27
Civil Procedure Code, 1908 (CPC) — Order 41 Rule 1
Constitution of India, 1950 — Article 225

Citation : AIR 2000 Cal 117

Hon'ble Judges : Samir Kumar Mookherjee, Acting C.J.; Amitava Lala, J

Bench : Division Bench

Judgement

Amitava Lala, J.—The appeal arises out of the order of a single Judge sitting in Original Side Writ Jurisdiction of this Court dated 17th April, 1997. The appellant preferred this appeal on 15th May, 1997 i.e. within the prescribed period of limitation but without certified copy.

2. As per the Rules of the High Court at Calcutta relating to applications under Article 226 of the Constitution, the matters in the Original Side, will be regulated by Original Side Rules and matters in the Appellate Side, will be regulated by Appellate Side Rules.

3. Under the Original Side Rules a Memorandum of Appeal has to be preferred with certified copy of the order like the Civil Appeals as prescribed by Order XLI, Rule 1 of the Code of Civil Procedure. Such procedure is available under Chapter XXXI, Rule 2 of the Original Side Rules. But in case of appeal arising out of an application under Article 226 of the Constitution of India in the Appellate Side of High Court, there is no necessity of filing certified copy of the order of the trial Court along with the Memorandum of Appeal at the time of preferring it, provided the appeal is filed within the prescribed period of limitation.

4. Under Chapter XVI, Rule 27 of the Original Side Rules, a party in whose favour order is passed will have to apply for drawing up, and completion of such order

within 3 days of passing of the order and in default any party will get another 7 days for the same in all a total of 10 days which can be enlarged with the leave of the Court. It is significant to note that unless an order is drawn up and completed, certified copy cannot be issued. Therefore, this is the procedure for obtaining a certified copy in the Original Side of this Court.

5. The point raised by the respondent that at the time of preferring an appeal in the Original Side a leave has to be obtained under prayer (a) of the petition which includes amongst others "(I) to have the impugned order and judgment dated April 17, 1997 drawn up and completed and filed within the period of limitation." Therefore, unless one has made an application for drawing up and completion of the order of the trial Court, being part of the process of obtaining certified copy, within the period of limitation, an appeal cannot be preferred. In other words, the appeal is barred by law of limitation.

6. The bone of contention of the argument of the respondent is that the period of limitation for preferring an appeal is 30 days within which the appellant should have obtained leave to draw up and complete the order dated 17th April, 1997. By not doing so leave to file the Memorandum of Appeal on the undertaking that "to have the impugned order and judgment dated April 17, 1997 drawn up and completed and filed within the period of limitation" is redundant. Therefore, order in terms of prayer (a) of the application to admit the appeal should not be granted.

7. On enquiry we came to know that the Court granted a leave to draw and complete the order dated 17th April, 1997 after two days from the prescribed period of limitation i.e. on 19th May, 1997 although the appellant preferred an appeal within the prescribed time without certified copy.

8. The respondent raised objection by showing several Division Bench Judgments of this Hon'ble Court, reported in Gadadhar Ghosh Vs. Janki Nath Ghosh and Others, ; Krishna Kumar Khemka and Another Vs. Jagadish Narayana Bhan and Others, ; Bangeswari Cotton Mills Ltd. Vs. Dhanrajmal Govindram and Others, and United Commercial Bank Vs. M.C. Shaw Bonded Warehouse and Others, which are not arising out of similar circumstances in writ appeals and distinguishable from the present case.

9. On the other hand, the appellant cited three Division Bench Judgments, reported in 97 CWN 199 (State of West Bengal v. Bholanath Ghosh) ; University of Calcutta and others Vs. Ram Prosad Ghosh and others, with connected matters which are arising out of Writ Appeals in the Original Side wherein it has categorically stated that the Court cannot introduce any system which will stand in the way of dispensing justice in fair and proper manner in accordance with law. Such a procedure would be discriminatory.

10. Therefore, this is high time to lay down identical Rules in dealing with appeals arising out of order under writ jurisdiction both in Original Side and Appellate Side of this Hon'ble Court. Enlargement of time to draw up and

complete an order and applicability of principles of mutatis mutandis are well founded in the Original Side Rules. Nature of applications, reliefs and nature of appeals are identical in both the sides. Therefore, as to why litigant should be debarred from preferring an appeal without certified copy when another on the similar circumstances is entitled to prefer appeal. Limitation cannot be equated with the process of a Court of Law in obtaining certified copy but one should be diligent to maintain the discipline. In the instant case the appellant preferred this appeal within time. Filing of requisites for drawing up and completion and for certified copy of an order and taking proper steps in connection thereto are not in the hands of a lay client.

11. Hence, we cannot accept the objection raised by the respondent, we resolve the preliminary issue by saying that an appeal can be preferred by an appellant from an order passed in Writ Jurisdiction of this Hon"ble Court either in the Original Side or in the Appellate Side without certified copy of such order, if not, otherwise hit by law of limitation.

12. In the instant case we need not enter into complications as without certified copies, an appeal was filed within time and that being in conformity with the rules governing such filing, whether leave was obtained or not, will not affect the maintainability of the appeal. We, however, make it clear that in case an appeal is filed with a certified copy, then the question of the same being barred by limitation will have to be decided after giving the appellant the benefit of time requisite for obtaining the certified copy, which will also includes the extension granted by Court on the prayer for leave in accordance with the Original Side Rules.

13. All parties are to act on the signed copy of the minutes of the operative part of the judgment on the usual undertaking,

S. K. Mookherjee, Actg. C.J.

14. I agree with the conclusion.