

(1974) 08 SHI CK 0002

In the High Court Of Himachal Pradesh

Case No : C.M. Ps. No's. 665 and 666 of 1973 in R.F.A. No. 12 of 1973

Gian Chand etc.

APPELLANT

Vs

Union of India (UOI)

RESPONDENT

Date of Decision : 06-08-1974

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 149
Land Acquisition Act, 1894 — Section 18
Limitation Act, 1963 — Section 12, 5
Punjab High Court Rules and Orders — Rule 11, 23

Citation : (1974) 3 ILR HP 770

Hon'ble Judges : D.B. Lal, J

Bench : Single Bench

Advocate : Chhabil Dass, for the Appellant; B. Sita Ram, General, for the Respondent

Final Decision : Allowed

Judgement

D.B. Lal, J.—These are two civil miscellaneous petitions (No. 665 and 666 of 1973) which emerge out of a regular first appeal instituted by Gian Chand and others against the Union of India. The dispute relates to a proceeding under the Land Acquisition Act of which a reference was made to the District Judge u/s 18 of the Act. The judgment of the learned District Judge was pronounced on 25-7-1972. Application for copy was given on 27-7-1972. Although the copy was ready on 23-1-1973, but the same was despatched by post on 27-6-1973. Thereafter on 24-9-1973 the present appeal was filed by Gian Chand and others.

2. On the memorandum of appeal was affixed a Court-fee stamp of Rs. 5.25 although stamp worth Rs. 2002.50 was required. At once two objections have been taken that the memorandum of appeal was deficient in Court-fee and that the appeal was also time barred because the period of 90 days expired long ago if computed from the day the judgment was delivered by the learned District Judge. Accordingly Gian Chand and others filed C.M.P. 665 of 1973 which is an application u/s 149 of the Civil P. Code for extension of time for making up the

deficiency of Court-fee, and C.M.P. 666 of 1973 an application under Sections 5 and 12 of the Limitation Act for extending the period of limitation for a just and sufficient cause. I propose to deal with these applications one after the other.

3. The application u/s 149 of the Civil P. Code is governed by the following circumstances. According to the affidavit filed by one Sansar Chand Appellant, Shri Chhabil Dass, Advocate, was engaged by them and on 17-9-1973 the papers were despatched to him by another Advocate of Chamba where the Appellants reside. On 19-9-1973 Shri Chhabil Dass, Advocate, received the papers, but the Court-fee was deficient. Accordingly he sent back the information to the Advocate at Chamba and Sansar Chand Appellant started with the requisite money and could reach Simla only on the evening of 23-9-1973 which was Sunday. The Court-fee stamp of the value of Rs. 2002.50 could not be available with the Stamp-vendor. As such the treasury was required to be approached for purchasing the stamp of that value. This was not possible to be accomplished on 24-9-1973 and therefore the memorandum of appeal was presented on that day with deficient Court-fee stamp. According to the Appellants, the Court should exercise discretion in their favour and allow them to make up the deficiency u/s 149.

4. As against this, the Union of India has contested that the Appellants should not have depended on postal correspondence and they could have personally brought the requisite court-fee to Simla on 17-9-1973 or a day or two thereafter in order to enable them to present the memorandum of appeal. Apart from that, it is also contested that it was not difficult to obtain the Court-fee stamp from the Treasury even on 24-9-1973. In support of that contention a letter is filed written by the Treasury Officer, Simla, which indicates that no doubt stamp-vendors are not authorised to sell court-fee stamps worth more than Rs. 100 to one party but the Appellants could easily obtain the stamp from the treasury which affords every facility in a case which is bound by limitation.

5. It is no doubt true that in a case u/s 149, the discretion has to be exercised by the Court judicially and not automatically merely for the asking see: Basawwa Dada Mali Vs. Limbawwa Dada Mali, . I can well quote the following observation of a Full Bench of Allahabad reported in Section S. Wajid Ali Vs. Mt. Isar Bano Urf Isar Fatma,

There is no uniform practice followed by the High Court of Allahabad of liberally construing the words "in its discretion". The other High Courts too have not been uniform. All that can be laid down on how the discretion is to be used is that (a) where insufficiency in court-fee is due to a bona fide mistake in calculating the amount payable, or to circumstances beyond the control of the party concerned, e.g., robbery, non-availability of court-fee stamps etc., the Court will, no doubt, use its discretion in favour of the litigant; and (b) where a litigant is able to pay full court-fee and yet presents a document insufficiently stamped, either because he expects a compromise in the case or he wants to await the result of some other litigation or because he negligently failed to bring sufficient money with

him for paying the court-fee, or for any similar reason. or where he is" guilty of contumacy or mala fides, e.g., when he wants to harass the other side by continuing a litigation, time will not be granted. Cases lying in between the two extremes will have to be decided according to their own circumstances.

The crux of the matter would therefore be, if insufficient court-fee was brought due to circumstances beyond the control of the Appellants, namely non-availability of court-fee stamps of that value. If that was so the Court will use its discretion in favour of the Appellants. In my opinion, no circumstances are made out to indicate that the Appellants expected to see the result of their application under Sections 5 or 12 of the Limitation Act and for that reason did not file the complete court-fee--an argument advanced by the learned Advocate-General. Nor can it be stated that the Appellants are guilty of contumacy or mala fide, to wit, that they want to harass the other side by continuing a litigation. Taking regard to the valuable observation made by the Full Bench decision (supra), I have to examine the circumstances to arrive at a finding in this regard.

6. It is undisputed that court-fee stamp of that much value was not available with the stamp-vend or under a definite rule which was in force. As such the Appellant Sansar Chand was to get the stamp from the treasury and for that a procedure is prescribed. The procedure is also indicated in the letter of the Treasury Officer. I am doubtful if the entire formality could be completed in one day, i.e. on 24-9-1973 which was the last day for filing the appeal in Court. The learned Counsel pointed out the provisions of Chapter IV-B of the Rules and orders of the Punjab High Court (Vol. IV) which are applicable to Himachal Pradesh. Under those provisions a single stamp of the value required for court-fee was to be filed. If a single stamp was not available, then stamps of lower value could be filed but those stamps were also required to be minimum in number. For all this, it was incumbent upon the Appellants to have gone to the treasury. Above all, a certificate was also required to be filed as prescribed under Chapter IV-B. All these formalities required considerable time. Therefore, in my opinion, neither the Appellants were guilty of contumacy nor of mala fide conduct. The period of limitation was expiring on 24-9-1973 and they hurried to file the memorandum of appeal on deficient stamp.

7. The learned Advocate-General contended that at any rate stamp worth Rs. 100 could be filed, but if that was not done nothing adverse can be inferred. After all even that amount was highly deficient and extension of time would have been solicited.

8. It is also pointed out that the Appellants should have taken the precaution of purchasing the stamp well in time and before sending the papers to Shri Chhabil Dass, Advocate, they should have sent stamp of complete value also. As the period of limitation expired on 24-9-1973 and the Appellants considered that time between 17-9-1973 and 24-9-1973, was more than sufficient to purchase stamp, they could legitimately wait upto that period. No one can compel a litigant to appear in Court before the period of limitation expires. Of course, he

does so at his own risk. In the present case fortunately for the Appellants, they have made out a good cause for not filing the complete court-fee stamp. I would, therefore, allow the application u/s 149 and grant time to the Appellants to file the remaining court-fee stamp. They have to make up the deficiency in court-fee within two weeks from the date of this order, failing that the memorandum of appeal shall be deemed rejected.

9. Now I shall advert to the other miscellaneous petition (C.M.P. 666 of 1973). This is a petition under Sections 5 and 12 of the Limitation Act. u/s 12, as evident, whatever time was spent for obtaining a copy of the decree or order is to be excluded. Obviously, this time was between 23-1-1973 and 27-6-1973. Under Rule 11 of Chapter XVII--Vol. IV, Rules and orders of the Punjab High Court (applicable to Himachal Pradesh), the copy could be sent for by post for which postal and registration charges were paid. Therefore, whatever delay was caused in despatching the copy by post was due to the fault of the copying department. There is another significant omission in the copy, inasmuch as, under Rule 23 of that Chapter, the date on which the copy was examined and attested was required to be given. But the said date is missing. The learned Counsel could successfully argue that the copy may even be considered to be incomplete. However, the said copy has been accepted and the objection may be purely academic. It was not required of the Appellants to have gone to the copying department every day and making enquiries about the preparation of the copy. When the copy was not despatched on the prescribed date, it was the duty of the copying department, either to have informed the Appellants of the expected date of delivery or they could despatch the copy by post for which the requisite fee was paid. They naturally chose to despatch the copy by post. But somehow the matter was delayed for a couple of months and the copy which was ready on 23-1-1973 was despatched by post on 27-6-1973. The entire period was spent "in obtaining a copy of the decree" and must be excluded u/s 12. That being the position, when the memorandum of appeal was filed on 24-9-1973 it was filed exactly on expiry of 90 days from the date of the delivery of the judgment. As such the application u/s 12 is also allowed and the memorandum of appeal can be taken to be filed within the prescribed period of limitation.