
(1978) 09 CAL CK 0022
In the Calcutta High Court
Case No : L.P.A.T. No. 1022 of 1975

Golak Behari Mitra and Others

APPELLANT

Vs

G.S.S. Brothers

RESPONDENT

Date of Decision : 13-09-1978

Acts Referred:

Limitation Act, 1963 — Section 15

Citation : 83 CWN 143

Hon'ble Judges : B.C. Chakravorti, J;A.K. Sen, J

Bench : Division Bench

Advocate : Satyapriya Ghosh, for the Appellant;

Judgement

1. A disputed question as to whether the instant appeal under clause 15 of the Letters Patent is barred by limitation or not has been referred to us by the learned Additional Registrar for decision. The plaintiffs in a suit for eviction are the appellants and they have preferred the instant appeal against the judgment and decree dated April 27, 1973, passed by our learned brother S.K. Datta, J. in S.A. 847/65. The present appellants were also the appellants in the above second appeal and their appeal being allowed, the matter was sent on remand by our learned brother S.K. Datta, J. and feeling aggrieved by the said order of remand, the appellants have filed the instant appeal under clause 15 of the Letters Patent. Though our learned brother delivered his judgment on April 27, 1973 no steps for filing the present appeal were taken by the appellants until November 23, 1973 where they filed an application for leave under clause 15 of the Letters Patent on condonation of the delay before our learned brother S.K. Datta, J. On that application a Rule was issued calling upon the respondents to show cause why the delay in filing the application should not be condoned and on such condonation the application should not be allowed. That Rule was made absolute on April 21, 1975 and the memorandum in the instant appeal was presented on April 29, 1975.

2. Distressingly enough the Stamp Reporter of this court made a report only

after three years on April 5, 1978, to the effect that the appeal would have been in time had it been filed on or before June 26, 1973, but was out of time by one year ten months and seven days on the date it was so presented. The memorandum along with the said report was placed before the learned Addl. Registrar for orders who, by his order dated April 28, 1978, directed the memorandum to be returned to the filing advocate. Being moved by the learned advocate for the appellants, the learned Additional Registrar recalled the aforesaid order on May 26, 1978 and directed the Stamp Reporter to make a fresh report after calculating the limitation with reference to the statement made in the first paragraph of the preamble to the memorandum of appeal. Being so directed, the Stamp Reporter made a second report on August, 11, 1978. In this report the Stamp Reporter revised his earlier views and stated that the memorandum had been filed 8 days beyond time. He reported as such as, in his view, the appeal would have been in time had it been presented in court along with the application for leave under clause 15 of the Letters Patent or had it been filed just on the very day the order of the court granting leave upon condonation of delay was made. The matter being placed before the learned Additional Registrar once more with this revised report, it appears that the correctness of the report was challenged by the learned advocate for the appellants who claimed that the appeal had been presented in time and hence, the learned Additional Registrar by his order dated September, 8, 1978, has referred the disputed question to us for decision.

3. There can be no dispute that the instant appeal being one under clause 15 of the Letters Patent, the period of limitation for filing of such an appeal would be 60 days from the date of the judgment appealed from if it be governed by Rule 2 Chapter viii of the Appellate Side Rules or 30 days from the date of the decree or the order if governed by Article 117 of the Limitation Act, 1963. Calculating the limitation in either way, it is not disputed that the instant appeal was not presented in time.

4. The Stamp Reporter, in our view, was right in making the first report that on the day the instant appeal was presented it was beyond time by 1 year 10 months and 7 days. Persuaded by the learned advocate for the appellants the learned Additional Registrar called for a fresh report in view of the fact that our learned brother S.K. Datta, J. had on condonation of the delay granted leave under clause 15 of the Letters Patent on April 21, 1975. In our view, the learned Additional Registrar was wrong in calling for a fresh report in the instant case because obtaining of such leave on an application which itself was presented long after the appeal had become barred by limitation was of no consequence in the matter of calculating the limitation. When the matter went back, the Stamp Reporter made a fresh report as we have indicated hereinbefore. He seems to have taken the view while making the second revised report that, though limitation is to be calculated from the date of the judgment, the earlier delay stood condoned by the order of our learned brother S.K. Datta, J. when he on condonation of the delay had granted leave under clause 15 of the Letters Patent

as prayed for by his order dated April 21, 1975. Such delay having been condoned, according to the Stamp Reporter, the appeal would have been in time had it been filed on the day the leave was so granted but was out of time by 8 days since it was presented 8 days after the granting of the said leave. Mr. Ghosh, the learned advocate for the appellants, however, took the stand before the learned Additional Registrar that the limitation should be calculated from the date the leave was granted and not earlier because no appeal could have been presented without such a leave. Such a dispute having been raised by Mr. Ghosh, the learned Additional Registrar has referred the matter to us for decision.

5. We have heard Mr. Ghosh in support of his contention which he has reiterated before us. But we are unable to find any merit in such a contention. Neither Rule 2 Chapter VIII of the Appellate Side Rules nor Article 117 of the Limitation Act provides that the limitation is to be calculated from the date the leave is granted. On the other hand, those provisions are clear and very specific that such limitation is to be counted from the date of the judgment or the date of the decree or order appealed from. It would be doing violence to those provisions to read it otherwise in the manner suggested by Mr. Ghosh. It is true that one has to obtain leave or, to be more precise, to obtain a certificate of fitness from the learned single Judge in preferring such an appeal. But it is now a settled principle that for the said purpose the time required for obtaining the leave or the certificate is to be excluded in calculating the limitation. But the limitation must be calculated from the date of the judgment or the date of the decree or the order appealed from. Reference may be made to a Bench decision of this court in the case of *Srish Chandra Chatterjee Vs. Sankalparani Mandal*, . It has been clearly laid down by P.N. Mukerjee and Amiya Kumar Mookerji, JJ. in the said decision that, in view of the amended provisions of section 15 of the Limitation Act or at least in view of the intelligible principles underlying the said provision, the time spent for obtaining the leave or the certificate which is a pre-requisite or condition precedent to the filing of an appeal under clause 15 of the Letters Patent should be deducted in the matter of computation of the period of limitation. Mr. Ghosh placed strong reliance on an observation made in the case of *K.M.S. Kumarappa Chettiar Vs. The Official Receiver*, . There it was observed that the order refusing leave in this case is a part of the judgment itself. But that observation was made in a different context. There the question raised was whether an appeal under clause 15 of the Letters Patent lay against the order refusing leave under that clause independently. It was held that no such appeal lay since such leave could be granted only with reference to the merits of the case in the second appeal, the judgment wherein is proposed to be appealed against on the leave being granted. The order refusing leave is accordingly held not to be an independent judgment against which an appeal under clause 15 can be preferred. This decision, however, is no authority for the contention put forward by Mr. Ghosh. The original judgment does not merge in the order refusing leave and still remains the judgment against which the appeal under clause 15 is being filed and the limitation must be counted from the date of that

judgment. Such being the position, we are unable to accept the contention of Mr. Ghosh that, since the appeal under clause 15 of the Letters Patent could not have been filed without leave or a certificate from the learned single judge, the limitation for the appeal should be calculated from the date of the certificate and not the date of the judgment. The contention raised by Mr. Ghosh being overruled, we are now to consider how far the Stamp Reporter was right in taking the view which he has expressed in the revised report dated August 11, 1978. He, as we have indicated hereinbefore, seems to have taken the view that, though the limitation is to be calculated from the date of the judgment, yet the delay from the date of the judgment until the date the leave was granted by our learned brother S.K. Datta, J. stood condoned by His Lordship's order dated April 21, 1975 so that the appeal would have been in time had it been filed on the day such leave was granted but was out of time by 8 days when the same was presented on April 29, 1975. In our view, the Stamp Reporter has proceeded on a fundamental misconception. The appeal under clause 15 of the Letters Patent lies to the Division Bench and it was for the Division Bench to condone the delay if there exists, in the opinion of the Division Bench, sufficient cause for such condonation. The learned single judge had neither the jurisdiction nor did our learned brother S.K. Datta, J. condone the delay in the matter of presentation of the appeal. What His Lordship did was to condone the delay in the matter of presenting the application for leave and not presenting the appeal itself which was yet to be presented on the leave being granted by him. In our view, therefore, by the order dated April 21, 1975, our learned brother S.K. Datta, J. had not condoned the delay in the matter of presentation of the instant appeal under clause 15 of the Letters Patent. This view of ours is well supported by the view strongly expressed by a Division Bench of this court in the case of Balchand Prohit vs. Bejoychand Mahtab, 46 CWN 131. Mr. Justice R.C. Mitter in delivering the judgment in the said case observed:--

We have grave doubts as to whether the learned single 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.

We are therefore, of the opinion that it was the first report of the Stamp Reporter which represents the correct position in law and this appeal on the date it was presented was out of time by 1 year 10 months and 7 days.

We, therefore, direct that the memorandum of appeal be returned to the filing advocate.