
(1970) 02 AHC CK 0003

In the Allahabad High Court

Case No : Civ. Miscellaneous Application No. 206 (M) of 1969 filed in Second Execution Decree Appeal No. 8 of 1969

Har Bux Singh and Others

APPELLANT

Vs

Gram Sabha, Kurmidih and Others

RESPONDENT

Date of Decision : 20-02-1970

Acts Referred:

Limitation Act, 1963 — Section 12(2)

Citation : (1970) 40 AWR 536

Hon'ble Judges : Lakshmi Prasad, J

Bench : Single Bench

Advocate : Jagdish Kumars, for the Appellant; Saghir Ahmad, Masood Ahmad Khan and Bashir Ahmad Khan for opposite party No. 3., for the Respondent

Judgement

Lakshmi Prasad, J.—This is an application u/s 5 of the Limitation Act for the condonation of delay in preferring the appeal. It is opposed on behalf of Respondent No. 3.

2. I have heard learned Counsel for the contesting parties. Learned Counsel for the Appellants maintains that even though by way of caution he moved an application u/s 5 of the Limitation Act, in fact the appeal is not time-barred and is well within time. His argument is that if the time taken in preparation of the decree is included while computing the time requisite for obtaining a copy of the decree, the appeal would be well within time. It is not in controversy that if the period of time that elapsed between the date of the judgment and the preparation of the decree is included in computing the time requisite for obtaining a copy of the decree then the appeal would be within time. In support of his contention that in computing the time requisite for obtaining a copy of the decree the period of time that elapsed between the date of the judgment and the preparation of the decree be included, reliance is placed on Explanation to Section 12 of the Limitation Act of 1963. Learned counsel has cited" before me a Full Bench decision of the Patna High Court--State of Behar v. Mohammad Ismail

AIR 1966 Pat 1 wherein the Explanation to Section 12 of the Limitation Act has been interpreted in the manner contended on behalf of the Appellants.

3. The contention does not appear to be without substance. Explanation to Section 12 runs as below:

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

Sub-section (2) of Section 12 directs for the exclusion of the time requisite for obtaining a copy of the decree from which it is proposed to prefer an appeal. Then comes the Explanation reproduced above. As shall appear from its language, it provides for the non-exclusion of the period between the date of the judgment and the preparation of the decree while computing the time requisite for obtaining a copy of the decree. Thus reading the two provisions together, it is obvious that in computing the period of limitation for an appeal the time requisite for obtaining a copy of a decree is to be excluded and in order to find out as to what is the time requisite for obtaining a copy of the decree we have not only to take into consideration the period that elapses between the date of the application for the copy and the date on which notice is given that the copy is ready for delivery but also that period of time if any which elapses between the date of the judgment and the preparation of the decree even though it may be that the application for the copy came to be made subsequent to the preparation of the decree. The net result is that the time taken in the preparation of the decree is to be excluded in every circumstance while computing the period of limitation for an appeal. I accordingly accept the contention raised on behalf of the Appellants and hold that this appeal is within time. As such it requires no orders for the condonation of delay.

4. I accordingly direct that the appeal be listed for orders as regards admission.