

(1955) 12 GAU CK 0001

In the Gauhati High Court

Case No : Appls. No"s. 46, 47 49 and 59 to 62 and 63 of 1955

Hari Charan Das and others

APPELLANT

Vs

Jagadindra Kishore Deb Burma and others

RESPONDENT

Date of Decision : 05-12-1955

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 112
Constitution of India, 1950 — Article 136

Citation : (1955) 12 GAU CK 0001

Hon'ble Judges : Brij Narain, J.C.

Bench : Single Bench

Advocate : A.K. Shyam Choudhury, for the Appellant; M.R. Choudhury for Opposite Party No. 1, for the Respondent

Judgement

Brij Narain, J.C.

1. Sri jagadindra Kishore Deb Burma has brought Application No. 46 praying that the leave to appeal to the Hon"ble Supreme Court granted to the appellants-petitioners by this Court on the application dated 1-12-1954, against the order of this Court passed in Civil First Appeal No. 5 of 1952 on 7-9-1954 be cancelled as the appellants have failed to deposit the security money and costs for translating etc., as required by O. 65, R. 7, Civil P. C. within the prescribed time limit. It has further been prayed that the stay order granted by this Court should also be vacated.

2. By means of the Applications Nos. 59 to 62 it has been prayed that the application of the petitioners No. 52 dated 20-6-1955 praying for extension of time be rejected and no further deposit be accepted from the appellants and the opposite party be awarded costs after cancellation of the certificate for leave to appeal and after vacating the stay order.

3. It has been contended on behalf of the opposite party that the deposit of Rs. 2500/- under R. (A) of O. 12 of Part II of the Supreme Court Rules should not be

deemed to be a valid deposit as it has been made beyond the time limit laid down in O. 65, R. 7, Civil P. C. Order 65, R. 7, Civil P. C. runs as follows :

7. Security and deposit required on grant of certificate.-(1) Where the certificate is granted, the applicant shall, within ninety days or such further period, not exceeding sixty days, as the Court may upon cause shown allow from the date of the decree complained of, or within six weeks from the date of the grant of the certificate, whichever is the later date,-

(a) furnish security in cash or in Government securities for the costs of the respondent, and (b) deposit the amount required to defray the expense of translating, transcribing, indexing, printing and transmitting to the Supreme Court a correct copy of the whole record of the suit, except-

(1) formal documents directed to be excluded by any rule of the Supreme Court in force for the time being;

(2) papers which the parties agree to exclude;

(3) accounts, or portions of accounts, which the officer empowered by the Court for that purpose considers unnecessary, and which the parties have not specifically asked to be included; and such other documents as the High Court may direct to be excluded;

Provided that the Court at the time of granting the certificate may, after hearing any opposite party who appears, order on the ground of special hardship that some other form of security may be furnished:

Provided further, that no adjournment shall be granted to an opposite party to contest the nature of such security.

4. It has been argued by the learned Advocate for the opposite party that the present appellants did not deposit the sum of Rs. 2500/- in accordance with R. 1(A) of Order 12 of the Supreme Court rules within ninety plus sixty days from the date of the decree, as the deposit was made on 6-10-1955 and the decree in First Appeal No. 5 of 1952 was passed by this Court on 7-9-1954.

The certificate for filing an appeal to the Supreme Court was granted by this Court on 6-4-1955 and as the full deposit was made on 3-12-1955 it cannot be deemed to have been made within six weeks of the grant of the certificate (the time of six weeks expired on 18-5-1955) and so it has been contended that the certificate granting permission for filing appeal before the Hon"ble Supreme Court should be cancelled.

5. On behalf of the appellants it has been urged that two of them are peons and one of them is a washer-man and so they could not deposit the money before 6-10-1955 and as they had prayed for extension of time for depositing the security money on 20-6-1955 and 3-8-1955 and they deposited Rs. 968/3/- as decretal dues and Rs. 31/13/- for translating etc., and they were granted extension of time by this Court the certificate for leave to appeal cannot properly

be cancelled.

6. It appears that the petitioners-appellants had applied for amendment of decree on the ground that the lawyer's fee shown in the decree was excessive and sometime was taken in the decision of this objection. Later on when it was held by this Court that the decree was correct the petitioners deposited Rs. 968/3/- in Court on 27-8-1955.

7. On behalf of the opposite party it has now been contended that this Court could not legally and time for making the deposit. Prior to the passing of the CPC Amendment Act 26 of 1920 the applicant was bound to make a deposit within six months from the date of the decree and the words "ninety days or such further period not exceeding sixty days as the Court may upon cause shown allow", were substituted by the Amending Act.

The object of the amendment was to expedite appeals to the Privy Council by restriction of the Court's discretion in granting extensions of time within which to comply with the provisions of the rule in regard to the furnishing of security etc. The amendment of the rule came into force on 1-8-1921, at the same time as certain rules which, were framed by the Privy Council. Rule 9 of the Privy Council Rules is as follows:

Where an appellant having obtained a certificate for the admission of an appeal, fails to furnish the security or makes the deposit required (or apply with due diligence to the Court for an order admitting the appeal), the Court may, on its own motion or on an application in that behalf made by the respondent, cancel the certificate for the admission of the appeal, and may give such directions as to the costs of the appeal and the security entered into by the appellant as the Court shall think fit, or make such further or other order in the premises as, in the opinion of the Court, the justice of the case requires.

Rule 1 of O. 12 of the Supreme Court rules substantially embodies the provisions of this rule and as under S. 112, Civil P. C. nothing contained CPC is to affect the powers of the Supreme Court under Art. 136 or any other provision of the Constitution and the provisions of the CPC cannot interfere with any rules made by the Supreme Court and for the time being in force, it is clear that this rule should prevail and as the last portion of this rule clearly confers powers on the High Court for extension of time, it has to be held that the High Court can extend time for making deposits in cases in which it considers it necessary to do so: vide *Bishnath Singh and Others Vs. Collector in Charge of Court of Wards Estate of Sri Ram Chandra Naik Kaliya*, in which *Thorn C. J.* held:

In our judgment the provisions of R. 9 which are wide and general in their terms do confer upon the High Courts a discretion to extend the time prescribed by O. 65, R. 7, Civil P. C, a discretion however which is only to be used in exceptional circumstances.

8. It will be observed that the power conferred by the rule to cancel the

certificate is not mandatory and it is clear that the intention of the trainers of the rule was to leave a discretion with the High Courts in regard to the order to be passed upon failure, by the appellants, to furnish the security or make the deposit within the time specified by the Civil Procedure Code. Nothing could be wider in import than the provision "or make such further or other order in the premises as, in the opinion of the Court, the justice of the case requires."

9. The same view appears to have been held in *Nilkant Balwant v. Satchidanand Vidya Narsimha Bharati*, 1927 Bom 217 (AIR V 14) (B) *Gulam Hussain v. Mansurbeg*, 1952 Nag 302 (AIR V 39), (C); *Shankar Dyamangonda v. Puttabai Gurunathgonda*, 1939 Bom 483 (AIR V 26) (D); *Lachmeshwar Prasad v. Girdhari Lal*, 1939 Pat 667 (AIR V 26) (FB) (E) and *Ramayya v. Lakshmayya*, 1933 Mad 796 (AIR V 25) (FB) (F).

10. There is no doubt that a contrary view was taken in *Poornananthachi v. Gopalaswami Odayar*, 1932 Mad 484 (AIR V 19) (G), in which it has been laid down that inability to raise the necessary funds for furnishing security is not a ground for extension of time, especially when considerable time has elapsed since the date of the decree, and also in the unreported case of *Hansnath, v. Raghuprasad*, All. P. C. Appeal No. 25 of 1927, D/- 21-10-1927 (All) (H) and in *B, an Advocate of Benaras v. Judges of High Court at Allahabad*, reported in 1933 All 241 (AIR V 20) (FB) (I).

In the last mentioned case *Niamatullah J.*, who gave a dissenting judgment observed while commenting on the view that R. 9 of Privy Council Rules gives nothing more than the right to cancel the certificate or, if it can be read as giving the Court any power to extend the time, then if good cause is shown to extend the time for furnishing the security, provided the extended time does not exceed sixty days, as follows:

With respect, I wish to point out that the application of R. 9 is not necessarily reached when the ninety days from the date of the decree have passed and the applicant has failed to furnish security and make good the deposit required by R. 7. It should be borne in mind that the period of limitation for an application for leave to appeal to the Privy Council is ninety days from the date of the decree to be appealed from.

In a large majority of cases the period of six weeks from the date of the certificate expires long after the ninety days from the date of the decree and also the maximum period of sixty days by which the Court may extend the aforesaid ninety days. It has further been observed that O. 65 R. 7, Civil P. C. and R. 9 of the Privy Council Rules can be so read as to make them consistent with each other and that a reading-which makes them consistent should be preferred to the one which makes them inconsistent.

If however the two are irreconcilable, R. 9 should prevail specially since it confers a power which is indispensable for doing justice in cases of exceptional nature

The Judges of the High Court can be trusted to discriminate between the cases in which ends of justice demand an extension of time and those in which they do not.

11. I think the views expressed in 1939 All 299) (AIR V 26) (FB) (A) & the opinion of Niamatullah J. cited above lay down the correct position of the law and this Court has power in appropriate cases to grant extension of time.

12. In Pitamhari Dibya v. Chandrasekhar Praharaj, 1954 Orissa 71 (AIR V 41) (J) also it has been laid down that the Court is bound to give effect to the rule of the Supreme Court in preference to the provisions of the CPC when a conflict between the two arises. Therefore, the Court has power to extend the time by virtue of the express provision in Rr. 3 and 5 of O. 12 of the Supreme Court Rules. But this power should be exercised with great caution only where there are cogent reasons for doing so.

13. In Shiva Jute Baling Ltd. v. Hindley & Co. Ltd., 1955 SC 464 (S) AIR V 42) (K), Hon"ble B. K. Mukherjee C. J. has held that ordinarily when a High Court grants a certificate giving leave to a party to appeal to the Supreme Court, it is that Court which retains full control and jurisdiction over the subsequent proceedings relating to the prosecution of appeal till the appeal is finally admitted.

It is for the High Court to see that its directions are carried out regarding the furnishing of security or the making of deposit and when these conditions are fulfilled, it has then to declare the appeal finally admitted under O. 65, R. 8, Civil P. C. The jurisdiction of the Supreme Court begins after the appeal is finally admitted.

14. In the present case I have already pointed out above that the present petitioners at first thought that the decree prepared by the office of this Court was not correct and some time was taken in securing an amendment of the decree. After that matter was concluded the petitioners deposited the amount of costs without any loss of time but then attention was drawn to the rule of the Hon"ble Supreme Court according to which Rs. 2500/- were to be deposited.

The appellants had to be given some time for depositing such a big sum as two of them are peons and one of them is a washer-man and if time had not been given the ends of justice could not be secured. this Court, therefore granted extension of time and in view of the special circumstances of this case I think the prayers of the opposite party cannot be allowed. The objections raised by the opposite party are thus disallowed and the appeal is declared finally admitted under O. 45, R. 8, Civil P. C. The parties will bear their own costs in this proceeding.