(1954) 04 P&H CK 0013

In the Punjab And Haryana At Chandigarh

Case No : Civil Miscellaneous No''s. 209; 233 to 236 of 1953

Jug Lal APPELLANT

Vs

Karm Singh and Others RESPONDENT

Date of Decision : 06-04-1954

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 115
Constitution of India, 1950 — Article 226, 227
Limitation Act, 1963 — Section 12, 12(2)

Citation : (1954) 04 P&H CK 0013

Hon'ble Judges : Mehar Singh, J

Bench : Single Bench

Advocate : S. Tirath Singh, for the Appellant; Gurbachan Singh, for the Respondent

Judgement

Mehar Singh, J.—This judgment will dispose of five petitions under Article 227 of the Constitution. The petitions are Nos. 209, and 233 to 236 of 1953. The Petitioner in each case aggrieved by an order of the Assistant Collector filed an appeal to the Collector who without going into the merits of the case. in, appeal, dismissed the appeal on the sole ground that it was time-barred and that no prayer had been made to him for condonation of the limitation nor any circumstance had been shown for such condonation.

In each case the Petitioner went in revision to the Commissioner, who recommended to the Financial Commissioner that the order of the Collector should be revised on the ground that he had failed to exercise jurisdiction in dismissing the appeal as barred by limitation when in fact excluding the time for obtaining copies of the judgment and decree the appeal was within limitation. The learned Financial Commissioner by separate judgment in each case, but proceeding on the same reasoning did not accept the recommendation of the Commissioner on the ground that

there was no prayer before the Collector that the time taken for obtaining copy, of the judgment "mid be taken into consideration.

2. Against this, order of the learned Financial Commissioner in each case, the Petitioner has filed a petition under Article 227 of the Constitution seeking reversal of the order n the ground that that order is made in violation of clear provisions of law.

3. It is not denied by the learned Counsel on either side that if the time for obtaining copies of the judgment and decree is excluded then the appeal before the Collector, in each case, was within! time counting time from the date of judgment and decree of the Assistant Collector to the date of the presentation of the appeal" to the Collector.

4. Section 12, Limitation Act applies to appeals under the Tenancy Act. Sub-section (2) of Section 12, Limitation. Act is as follows:

In computing the period of limitation prescribed for an appeal, an application for leave to appeal and an application for a review of judgment,''. the day on which the judgment complained of; was pronounced and the time requisite for obtaining a copy of the decree,'' sentence or order appealed from or sought to be reviewed, shall be excluded.

The plain reading of this provision of law shows that it is an imperative provision and, that a Court is not permitted to ignore the time that is excluded under Sub-section (2) of Section 12, Limitation Act. There is nothing in Section 12, Limitation Act that requires an application on the part of a party claiming exclusion of the time as stated in that section.'' It is the duty of the Court to exclude such time on considering the ''facts presented before it. In the cases under consideration on the copies of the judgments and decrees all relevant dates of making the applications for copies, of the preparation of the copies, and of the delivery of the copies are clearly stated.

The Court could take immediate cognizance of that statement on each Copy of the judgment and the decree. No further evidence was required to prove to the Court what time was spent in obtaining the requisite copies. It was its duty to exclude such time in computing period of limitation for the appeals having regard to the provision of Section 12(2), Limitation Act. There is no discretion in the Court in the matter and in coming to the conclusion whether or not an appeal or an application is or is not within time it is bound to exclude'' the time requisite for obtaining a copy of the decree or order appealed from. This view is supported by - ''Firm Ram Chand Chiranji Lai v. Deputy Commissioner Bhatinda'', AIR 1954 Pepsu 76 (A), in which case the appellate authority had dismissed the appeal having been presented two days after the period of limitation ignoring the fact that those two days were public holidays. The learned Chief Justice observed that

since the decision of the appellate authority on the question of limitation was not only erroneous but the mistake was apparent on the face of the record, it is a proper case in which a relief by way of writ should be granted.

Even in the present cases, and in each one of them, it was patent on the record what time must have been excluded by the appellate authority u/s 12(2), Limitation Act in arriving at the decision whether the appeals were or were not within time. This decision has been referred to by the learned Financial Commissioner in his orders, but he has sought to distinguish it on the grounds (a) that it was possible that no time was spent for the purpose, that is, for obtaining copies, and (b) that no brayer was made to the Collector to exclude the time spent in obtaining copies. The first ground cannot be sustained because here is no question of consideration of possibility n these cases the evidence is available on the copies filed with the record, and this argument can only stand if that evidence is studiously ignored, The second ground has no basis in it because Section 12, Limitation, Act does. not require any such prayer or application on the part of a party for the exclusion of,the time spent in obtaining copies as such exclusion is made imperative by the section itself and it is the duty of the Court to exclude such time.

5. The powers of revision of the Financial Com missioner, are u/s 84 of the Tenancy Act same as that of, a High Court u/s 115, CPC According to Clause (b) of Section 115, CPC failure to exercise jurisdiction vested in a Court is a ground for interference in revision. Where a Court dismisses an appeal or application as time-barred on an erroneous conception of law that apparently is failure to exercise jurisdiction vested in it. This, has been clearly explained in the decision already cited above and with reference to - AIR 1949 239 (Privy Council)

The decision of the Collector in each one of the cases under consideration was against the provisions of Section 12, Limitation Act and therefore the] dismissal of the appeal, in each case, on his part was a, failure to exercise jurisdiction vested in him. Upon this ground the learned Financial Commissioner sad no choice but to interfere with the order of the collector in each case and to set aside that order and remit each appeal for decision on merits. The, learned Financial Commissioner has given decision quite contrary to the provisions of Section 12, Limitation Act.

6. The learned Counsel for the Respondents urges that even if the learned Financial Commissioner has given a wrong decision that is no ground for interference by this Court under its powers under Article 227 of the Constitution. In - D.N. Banerji Vs. P.R. Mukherjee and Others, their lordships have observed that "unless there was any grave miscarriage of justice or" .flagrant violation of law calling for interference it is not for the High Court under Articles 226 and 227 of the Constitution to interfere." In my opinion here the decision of the learned Finical Commissioner is clearly in flagrant violation of 12, Limitation Act inasmuch as he has not accepted the law as stated in that section so as to exclude the time spent in obtaining copies of the judgments and decrees in the cases under consideration and has refused to apply the provisions of that section on the grounds which can on no consideration be sustained. Therefore the petitions under Article 227 of the Constitution are competent.

7. In the view taken above, each one of the five petitions is accepted with the result that the orders of the learned Financial Commissioner and the Collector are set aside and the appeals are remitted to the Collector for disposal according to law.

8. In view of the attitude adopted in the cases by the revenue courts in these cases the parties left to bear their own costs.

