
(1962) 03 GUJ CK 0021
In the Gujarat High Court

Khakhar Shivilal Vallabhaji

APPELLANT

Vs

Mistry Ramjibhai Dhanjibhai

RESPONDENT

Date of Decision : 06-03-1962

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 115, 115

Citation : (1963) 4 GLR 164

Hon'ble Judges : V.B. Raju, J

Bench : Single Bench

Judgement

V.B. Raja, J.—The District Judge, Bhavnagar, refused to condone the delay in filing an appeal holding that there was no sufficient cause to do "So. Such an order is not liable to be interfered with in a revision.

But, it is, however, contended that in fact there was no delay. The judgment appealed against was pronounced on 2-5-59. Vacation commenced from 3-5-59 and continued till 15-6-59. An application for certified copies of the judgment and decree was made on 6-6-59 and they were delivered on 22-6-59. The appeal was filed on 25-6-59. The District Judge thought that there was a delay of two days, as the appeal had not been filed on 22-6-59. Section 4 of the Limitation Act provides that where the period of limitation prescribed for any suit, appeal or application expires on a day when the Court is closed, the suit, appeal or application may be instituted preferred or made on the day that the Court re-opens. Section 12 of the Limitation Act so far as relevant reads as follows:

- (I) In computing the period of limitation prescribed for any suit, appeal or application, the day from which such period is to be reckoned shall be excluded.
- (2) 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 or order appealed from or sought to be reviewed, shall be excluded.

2. Part III of the Indian Limitation Act deals with the subject of computation of period of limitation. If after the period of limitation is computed, it is found that the period of limitation prescribed expired on a day when the Court is closed, then the suit, appeal or application as the case may be, may be instituted, preferred or made on the day that the Court reopens. This provision is contained in Section 4 of the Limitation Act. Section 4 has nothing to do with the question of computation of period of limitation. The period of limitation is to be computed in the manner stated in Section 12 to 25 of the Limitation Act. The first thing to be done in deciding the question of limitation is to compute the period of limitation. The next step is to see whether Section 4 applies after the period of limitation is computed. For computing the period of limitation in the instant case only Section 12 has to be applied. It is conceded by the Learned Counsel for the applicant that we have only to apply Section 12 and the other sections in Part III of the Limitation Act are not applicable. In this case an application for certified copies was made on 6-6-59 and the copies were delivered on 22-6-59. The period to be excluded is the period between 6-6-59 and 22-6-59. This period has to be excluded if it falls within the period of limitation. But the period of limitation expired on 3-6-59 and therefore the period between 6-6-59 and 22-6-59 which is outside the period of limitation cannot be excluded. The period of limitation would therefore expire on 3-6-59 and as 3-6-59 happens to be a vacation day appeal could have been filed on the day of the reopening of the Court after the vacation i.e. on 15-6-59. In this view the delay would be 9 days and not 2 days. In Sub-section (2) of Section 12 of the Limitation Act it is provided that the time requisite for obtaining a copy of the decree shall be excluded. In this case the time requisite is 17 days. So 17 days would have to be excluded from the period of limitation. But the use of the word "excluded" would mean that this time would have to be deducted only if it falls within the period of limitation. But the period of limitation expired on 3-6-59 and the time requisite for obtaining the certified copies which is outside the period of limitation cannot therefore be excluded. In this view the correct delay would be 9 days. Even assuming that the time requisite would have to be deducted even though it falls outside the period of limitation the period of limitation of 30 days would have to be increased by 17 days. The period of limitation would therefore be 47 days starting from 3-5-59. The period of limitation would therefore expire on 20-6-59. That day not being a holiday Section 4 does not help the applicant and the appeal should have been filed on 20-6-59. In this view the delay would be 4 days.

3. The Learned Counsel for the applicant however relied on *Siyadat Un-Nissa v. Muhammad Mahmud* ILR All 342 and on *Pandharinath v. Shankar* ILR 25 Bom 586 and contends that the period of 17 days being the time requisite for obtaining the certified copies would have to be calculated from the date of reopening of the Court after the vacation namely from 15-6-59. In I.L.R 25 Bom 586 Sir L. Jenkins Chief Justice of the Bombay High Court was dealing with a case where an application for a copy of the decree was made on the day of reopening of the Court after vacation. His Lordship observed as follows:

It may be said that Section 5 does not extend the period of limitation but merely permits the appeal to be presented on a particular day outside the period of limitation and it must be conceded that ground for such an argument is to be found in the phraseology of the Act. On the other hand it may be said that such an interpretation adheres too much to the letter of the Act and that if the application for copies is to be made at any time when the right to present an appeal subsists the exclusion sanctioned by Section 12 applies.

It is a matter of no great importance which view be taken of the Act so that the point be settled one way or the other. Now as far back as the 17th March 1897 A Division Bench of the Allahabad High Court after a full and careful consideration of the matter decided in favour of the second view (*Siyadat-un-Nissa v. Muhammad Mahmud* ILR All. 342) and as far as we are aware in no reported case has dissent from that view been expressed. In fact on more than one occasion that decision has been accepted as an authority in this Court.

Under these circumstances we think we should notwithstanding all that may be urged on the other side refrain from disturbing this rule of practice and should adhere to the decision of the Allahabad High Court.

His Lordship recognised that on the phraseology of the Act the view contended before him was unsustainable. His Lordship did not lay down that that view was the proper one having regard to the language of the Act. He did not decide which one of the two views was correct having regard to the phraseology of the Act. The function of a Judge is to decide the meaning of the language used by the legislature and that is his first and only duty. But in this case His Lordship Sir L. Jenkins C.J. did not decide what in his view was the correct interpretation of the language used in the Law of Limitation. In this view of the matter this decision is of no assistance in interpreting the language of the Limitation Act.

As already observed when the question of limitation of an appeal or a suit arises the first task is to compute the period of limitation having regard to the provisions contained in Part III of the Limitation Act i.e. Sections 12 to 25. Having done so if it is found that the day on which the limitation expires is a holiday then the question of applying Section 4 comes up. This is the proper order for procedure. The two steps which have to be followed one after another in the above order cannot be mixed up. In computing the period of limitation the number of days of vacation cannot be added to the number of days required for obtaining a copy. This is a procedure not recognised by the Limitation Act. In the instant case therefore there is a clear delay and the Court below having refused to condone the delay it is not open in a revision before me u/s 115 C.P. Code to contend that this Court should condone the delay. By refusing to condone the delay the Court below exercised its discretion and did not commit any material irregularity or illegality in the exercise of its jurisdiction.

4. It is next contended that this revision application should be treated as second appeal u/s 28 of the Saurashtra Rent Control Act 1951 Section 28 so far as it is

relevant reads as follows:

Notwithstanding anything contained in any law. but subject to the provisions of the Provincial Small Cause Court Act as adapted and applied to the State of Saurashtra an appeal shall be from a decree or order made by a Civil Judge or a Munsif exercising jurisdiction u/s 27 to the District Court and a second appeal to the High Court.

It is true that a second appeal does lie to the High Court from any decision of the District Court in an appeal filed before it u/s 28 of the Saurashtra Rent Control Act 1951 But in this case, the appeal to the District Court being beyond time there was no appeal before the District Court. A second appeal therefore does not lie to the High Court. It is true that the District Court refused to condone the delay but that is not an order passed by the District Court in an appeal presented to the District Court within time. This contention of the Learned Counsel for the applicant that a second appeal lies to the High Court is therefore rejected.

This revision application is therefore dismissed but there will be no order as to costs.