
(1979) 04 AP CK 0012

In the Andhra Pradesh High Court

Case No : Civil Revision Petition No. 2711 of 1978

Kolikipudi Atchamma and Others

APPELLANT

Vs

Kolikipudi Ketu and Another

RESPONDENT

Date of Decision : 27-04-1979

Acts Referred:

Limitation Act, 1963 — Section 12(3)

Citation : AIR 1980 AP 66

Hon'ble Judges : Chennakesav Reddy, J

Bench : Single Bench

Advocate : A. Hanumantha Rao, for the Appellant; B.V. Subbaiah, for the Respondent

Judgement

1. This revision petition arise out of the suit O. S. No. 1148 of 1971 on the file of the court of the District Munsif, Guntur. Defendants 1 to 5 are the petitioners. The plaintiff is the first respondent. Judgement was delivered in the suit by the learned District Munisif on 22nd October, 1975. The petitioners applied for a certified copy of the decree on 6-11- 1975. The copy of the decree was supplied on 28- 11 -1975, but the printed copies were not ready for a long time . Meanwhile, the first respondent began to take steps for execution of the decree. Since printed copies of the decree and judgement and field an appeal before the District Judge on 20th of September, 1977. The office took an objection that the appeal was time- barred. Therefore, an application I. A. 1998 of 1977 was field u/ s 5 of the Limitation Act, hereinafter referred to as the Act , to condone the delay in presentation of the appeal. It was contended in the application that since the application for printed copies of the decree and judgement field on 1- 12- 1975 was still pending and since they had lost by then 14 days in filing the application for the copy of the decree and 3 days after obtaining the copy of the decree on 28-11- 1975, the appeal was in time. The learned District Judge rejected the contention holding that the application for printed copies of the judgement and decree was itself field beyond the time fixed for preferring an appeal under Article 116 of the Schedule to the Act and dismissed the application observing

that there was no satisfactory explanation given by the petitioner for the enormous delay in preferring an appeal. It is against the said order that this revision petition is filed.

2. The only question that arises in this case is; what is the proper method for computation of the period of limitation u/s 12(2) of the Act. This question is obviously one that relates to the rule of practice. u/s 12(3) time requisite on which the decree is founded shall also be excluded. Therefore, when an appeal is preferred against a decree, the time taken for obtaining a copy of the decree as well as the judgement should be excluded in computing the period of limitation for preferring an appeal. The mere fact that one of the copy applications was filed beyond the period of limitation prescribed under the schedule to the Act cannot by itself be fatal to the maintainability of the appeal, if the appeal preferred is in time after excluding the time taken for obtaining copies of the judgement and decree. This was the view taken by the Division Bench of the Madras High court as long back as in 1897 in *Raman Chetti v. Kadirvelu* (1908) 8 MLJ 148. The learned Judges in that case held that in computing the period of limitation prescribed for an appeal u/s 12 of the Limitation Act, the time taken to obtain a copy of the judgement must both be excluded except where these two periods overlap except where these two periods overlap, the time overlapped shall be excluded. In that case, copy of the judgement was applied for on 27th October and that of the decree on 28th October. The former copy was ready on 31st October and the latter on 2nd November. The learned Judges said that time occupied in obtaining both copies was from occupied in obtaining to 2nd November, that is seven days that the appeal presented on the 97th day from the date of the decree was in time. This case was followed in *Silamban Chetty v. Ramanadhan Chetty* (ILR (1910) Mad 256). In that case, the learned judges noticed that it was true that the said decision would enable a party to apply for the copy of the other record and then to apply for the copy of the other record and thus extend the time while if he had applied for both the copies at the same time, the time requisite for obtaining the copies would have been less. Their Lordships however expressed that they were not prepared to differ from the decision in *Raman Chetti v. Kadirvelu* (1908) 8 MLJ 148) especially as it is a view taken in *Ramzan Baksh and Others Vs. Mahammad Ishaq*, .

3. The learned counsel for the respondent however relying on the decision of the supreme court in *State of Uttar Pradesh Vs. Maharaj Narain and Others*, submits that the question whether the appeal preferred was in time or not should be considered on the basis of information available from the copy of the judgement and decree filed along with the Memorandum of appeal and not from other copies which the party might have got and used for other purpose with which the court has nothing to do. In that case, the supreme court observed:-

"If the appellate courts are required to find out in every appeal filed before them the minimum time required for obtaining a copy of the order appealed from, it would be unworkable. In that event every time an appeal is filed, the court not

only will have to see whether the appeal is in time on the basis of the information available from the copy of the order field along with the memorandum of appeal but it must go further and hold and enquiry whether any other copy had been made available to the appellant and if so, what was the time taken by the court to make was the time taken by the court to make available that copy. This would lead to a great deal of confusion and enquiries in to the alleged laches or dilatoriness in respect not of copies produced either the memorandum of appeal but about other copies which he might have got used for other purposes with which the court has nothing to do."

4. In *B. Narsoji v. special Deputy collector* (1976) 1 APLJ 283) the learned Judges held that a party is not precluded from relying on any other certified copy of the judgement or decree obtained by him and claiming that his appeal was not barred by limitation on the basis of the endorsement on those copies and that the period of limitation need not be calculated only on the basis of the copies of the judgement and decree field along with the Memorandum of Appeal. But, the aforesaid decision of the Supreme Court was obviously not brought to the noticed of the learned judges. Following the decision of the supreme court which I am bound to , it must be held that the period of limitation in preferring an appeal has to be computed on the basis of the copies of the judgement and decree produced along with the Memorandum of Appeal. Now, in this case, on the basis of the copies of the judgement and decree field along with the Memorandum of Appeal was undoubtedly time- barred. Judgment was delivered on 22- 10-1975. Application for copies of the judgment and decree was made on 12- 7- 1977 and the appeal was presented on 20- 9- 1977. The learned District Judge was therefore right in holding that the appeal was time -barred and dismissing the application field u/s 5 of the Act holding that there was no sufficient ground for condoning the delay.

5. The revision petition is accordingly dismissed. No costs.

6. Petition dismissed