

(1957) 01 PAT CK 0023

In the Patna High Court

Case No : A.F.O.O. No's. 298 and 310 of 1952

Lady Anis Imam and Another

APPELLANT

Vs

Champamani Bibi

RESPONDENT

Date of Decision : 31-01-1957

Acts Referred:

Limitation Act, 1908 — Article 182, 182(2)
Supreme Court Rules, 1950 — Order 12 Rule 3

Citation : AIR 1957 Patna 373

Hon'ble Judges : Dayal, J;Choudhary, J

Bench : Division Bench

Advocate : Rai Indra Behari Saran, for the Appellant; Purnendu Narayan, for the Respondent

Final Decision : Allowed

Judgement

Dayal, J.—Miscellaneous Appeal No. 298 of 1952 arises out of Miscellaneous Case No. 17 of 1952 of the Court of the Subordinate Judge, Second Court, Arrah. Miscellaneous Appeal No. 310 of 1952 arises out of Miscellaneous Case No. 18 of 1952 of the same Court. The decree holders are the same in both the cases and they are the appellants in both the appeals. Both the cases were heard together in the trial court and are governed by one judgment, and they have been heard together in this Court also.

2. The admitted facts are these: The respondent had filed two Miscellaneous cases which were allowed by the trial Court. The appellants, thereupon, preferred appeals in the High Court. These Appeals were allowed by the High Court by the judgment dated 5-8-1948 and the appellants were allowed costs of the trial court as well as of the High Court. Thereupon, the respondent applied for leave to appeal. The High Court refused to grant leave. Then, the respondent applied for special leave to appeal in the Supreme Court and leave was granted in both the cases. These were ultimately numbered as Supreme Court Appeal NOS. 134 and 135 of 1951. Supreme Court Appeal No. 134 of 1951 was allowed to be

withdrawn on 13-12-1951 while, in the other appeal, the High Court, after hearing the appellant to the Supreme Court, certified on 29-1-1951 that the appeal would not be prosecuted.

3. The present appellants, then, filed the execution cases on 29-4-1952 for realisation of the costs allowed to them by the High Court. The respondent filed objections to the execution which gave rise to Miscellaneous Cases Nos. 17 and 18 of 1952. The Court below held that the execution cases, being beyond three years of the High Court decree, were barred by limitation and allowed the miscellaneous cases. The appellants have, therefore, preferred these two appeals.

4. So far as Miscellaneous Appeal No. 298 of 1952 is concerned, the order of the Court below is clearly erroneous. On a plain reading of Article 182, clause (2), Limitation Act, 1908, three years will be counted from the date of the withdrawal of the Supreme Court appeal and for that reason, the order of the Court below, to that extent, is clearly wrong and untenable in law. The Court below is wrong in relying on *Thakur Hirday Narayan Singh Vs. Rao Maheshwari Prasad Singh*, . This case does not deal with the point of withdrawal of appeal. It deals with non-prosecution of appeal. That being the position, this appeal must be allowed with costs throughout and .Execution Case No. 9 of 1952 of the Court of the Subordinate Judge, Second Court, Arrah, must proceed.

5. So far as Miscellaneous Appeal No. 310 of 1952 is concerned, the position is that special leave to appeal was granted by the Supreme Court on 17-9-1951 and it was further ordered that security money must be deposited within one month of the sealing of the order, and the order was sealed on 22-10-1951 and this was communicated to the High Court. On 29-11-1951, the matter was listed on the daily board before their Lordships (Lakshmi Kanta Jhar C. J. and Chatterjj, J.), as there was non-compliance of the order of their Lordships of the Supreme Court passed on 17-9-1951, giving time to the present respondent to file the security money within one month and their Lordships, after hearing the advocate for the appellant (the present respondent), gave the following certificate:

"Whereas the petitioner appellant was ordered, by the Supreme Court to deposit security in the sum of Rupees four thousand in this Court for the costs of respondents within one month from the twenty-second day of October One thousand Nine Hundred and fifty-one, and

Whereas the advocate for the appellant when called upon to furnish the abovementioned security stated that the appeal would not be prosecuted.

It is hereby certified for the information of the Supreme Court, that the aforesaid appeal has not been effectively prosecuted by the appellant and the preparation of the paper-book of the above mentioned appeal has, therefore, been suspended for the reason stated above".

In these circumstances, it appears that the certificate for special leave to appeal granted by the Supreme Court was cancelled.

6. The trial court has relied on the case of Hirday Narayan Singh (A) (supra). It does not appear from the report of this case as to how the appeal was dismissed for non-prosecution. The facts and circumstances about non-prosecution do not appear from the report. This case follows AIR 1914 65 (Privy Council) , Chaudhari Abdul Majid v. Jawahir Lal ILR 36 All 350: (AIR 1914 PC 66) (C); and Sachindra Nath v. Maharaj Bahadur Singh ILR 49 Cal 203: (AIR 1922 PC 187) (D). These cases dealt with non-prosecution of appeals coming within the purview of rule 34 of the Judicial Committee Rules, 1925. This rule provides for the dismissal of an appeal for non-prosecution of the appeal where no step for the prosecution of the appeal is taken within a specified period from the date of the arrival of the record in England. Thus, it appears that the dismissal for non-prosecution in such cases is merely administrative by operation of the said rule.

7. The present case is governed by the Supreme Court Rules, 1950. Rule 12 of Order XIII of these rules, which deal with appeals by special leave, provides:

"Save as otherwise provided by the rules contained in this order, the provisions of Order XII and Orders XV to XX shall apply mutatis mutandis to petitions for special leave to appeal."

Order XII of the Supreme Court Rules deals with civil appeal on certificate by High Court. Rule 3 of this Order provides

"Where an appellant, having obtained a certificate from the High Court, fails to furnish the security or make the deposit required, that Court, may on its own motion or on application in that behalf made by the respondent, cancel the certificate and may give such directions as to the costs of the appeal and the security entered into by the appellant as it shall think fit or make such further or other order as the justice of the case requires."

On a plain reading of this rule, it appears that any order coming under this rule will certainly be a judicial order as it provides for directions as to the costs of the appeal etc. Rule 6 of the Judicial Committee Rules, 1925, is similar to Rule 3 of Order XII of the Supreme Court Rules. Rule 6 of the Judicial Committee Rules, 1925, provides as follows:

"Where the "Judicial Committee agree to advice His Majesty to grant special leave to appeal, they shall in their Report, specify the amount of the security for costs (if any) to be lodged by the Petitioner, and shall unless the circumstances of a particular case render such a course unnecessary, provide for the transmission of the Record by the Registrar to the Registrar of the Privy Council and for such further matters as the justice of the case may require. Unless otherwise ordered the security shall be lodged at any, time before the Appellant enters an appearance."

8. The earliest case on the point is Ragho Prasad Singh and Others Vs. Jadunandan Prasad Singh and Others, . It was held that the period of limitation under Article 182 (2), Limitation Act, runs from the date of the dismissal of

appeal for non-prosecution as when the appellant failed to deposit the printing costs. Their Lordships referred to the Privy Council cases referred to above (Batuk Nath's case (B) and Abdul Majid's case (C)) and observed that the dismissal there was automatic so that the dismissal could not be said to be by the order of His Majesty in Council.

9. The view of this Court in similar cases is that Article 182 (2), Limitation Act, applies from the date of dismissal for non-prosecution, see, for instance, Krishna Kant Prasad and Others Vs. Radhey Singh, and Ram Ranbijaya Prasad Singh Vs. Kesho Prasad Singh, , In these two cases reliance was placed on AIR 1932 165 (Privy Council) and their Lordships laid stress on the words "where there has been an appeal". To me, it appears that, where there has been an appeal the date is to be counted from the final order passed in that appeal for the purposes of Article 182 (2) of the Limitation Act.

10. To me it appears that the Court below is wrong in holding that the order of dismissal in the present case is not a judicial order. The dismissal in the present case, is by operation of the order of their Lordships of the Supreme Court by which they granted special leave to appeal and directed that the security should be deposited within one month from the date of the sealing of that order. That order not- having been complied with, the matter was placed before their Lordships Lakshmi Kanta Jha, C. J. and Chatterji, J. who after hearing the advocate for the appellant (the present respondent) issued the certificate.

"that the aforesaid appeal has not been effectively prosecuted by the appellant and the preparation of the paper-book of the abovementioned appeal has, therefore, been suspended for the lessons stated above."

11. Hence it appears to me that the dismissal order in the present case for non-prosecution is a judicial order and time under Article 182 (2) of the Limitation Act will run, from the date of dismissal of the Supreme Court appeal- for non-prosecution.

12. For these reasons it appears to me that Misc. Case 18 of 1952 of the Court of the Subordinate Judge 2nd Court, Arrah, must be dismissed and Misc. Appeal No. 310 of 1952 of the Court of the Subordinate Judge, Second Court -Arrah should proceed.

13. The result therefore is that both the appeals are allowed with costs throughout and the judgment and order of the court below are set aside. The two execution cases must proceed in the court below.

Choudhary, J.

14. I agree.