

(1956) 02 AHC CK 0012
In the Allahabad High Court
Case No : S.C.A. No. 2 of 1955

Lal Dharam Mirat Singh and Another

APPELLANT

Vs

Kuar Man Singh and Another

RESPONDENT

Date of Decision : 08-02-1956

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 45 Rule 7
Supreme Court Rules, 1950 — Order 12 Rule 3

Citation : AIR 1956 All 477

Hon'ble Judges : Kidwai, J;H.S. Chaturvedi, J

Bench : Division Bench

Advocate : Hyder Husain and S.K. Vidyarthi, for the Appellant; Niamatullah, (for No. 1) and Uma Shankar Srivastava, (for No. 2), for the Respondent

Final Decision : Dismissed

Judgement

1. These applications relate to extension of time for depositing the security required to be deposited in the case of an appeal of the Supreme Court and also for depositing the costs of the preparation of the record. The petitioner offered security in the shape of landed property and eventually he deposited Zamindari Abolition Bonds of the face value of Rs. 2,500/-.

2. The decree of this Court was passed on 31-10-1954, and a certificate granting leave to appeal was issued on 10-10-1955. Under Order 45, Rule 7, C. P. C., the petitioner was required to furnish security in cash or in Government securities for the costs of the respondents and also to deposit the sum required to defray the expense of translating and generally preparing the record within 30 days of the date of the decree of six weeks from the date of the granting of the certificate.

The rule provides for the extension of time in the former case by the Court in its discretion but the extension is not to exceed 60 days. In case the time is calculated from the date of the grant of the certificate, no extension is permitted by the rule. There can be no doubt that there is no occasion to grant an extension of time from the date of the decree: the 150 days expired long ago.

The only question that has been raised before us is that the power to extend time by 60 days applies also to the case in which time is calculated from the date of the grant of the certificate. Reliance is placed for this proposition on -- Pitamhari Dibya Vs. Chandrasekhar Praharaj and Others, . In that case it was held that when the law of procedure fixed the time limit within which the act must be done, that must be complied with, and that consequently if Order 45, Rule 7, C. P. C. were the rule of procedure, no extension could be granted by the Court beyond the limits fixed in that rule.

The learned Judges, however, considered that owing to the provisions of Section 112, Civil P. C. the rules of the Supreme Court were to prevail and if those rules allowed an extension of time even in the case in which the calculation was made from the date of the grant of the certificate, the Court had power to extend time. The learned Chief Justice in his judgment relied upon Order 12, Rule 3 of the Rules of the Supreme Court. That rule is as follows:

"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."

It will be seen that the rule does not deal with the question of extension of time but it empowers the Court to cancel the certificate and to give such directions as to the costs of the appeal and the security given by the appellant as it thinks fit or to make such further or other order as the justice of the case requires. The last portion of the rule has relations to the earlier part in which it is said that directions are to be given as to the costs of the appeal etc,

A rule of this kind cannot be interpreted as prevailing over the express provisions of Order 45, Rule 7, C. P. C. which limit the power of the Court to grant extension. We regret, therefore, that we are unable to follow the decision of the Orissa Court. We have come to the conclusion that it is not possible to grant any extension. These applications for extension of time must be rejected.

3. It is pointed out in the office report that a sum of Rs. 72/9/- is due from the applicant in respect; of the costs of preparing an estimate and lists A and B. The certificate is can celled. The applicant will deposit the sum of Rs. 72/9/- as costs. The bonds given in security shall be returned except bonds of the face value of Rs. 500/- only on the deposit of Rs. 72/9/- being made.