

(1969) 11 P&H CK 0026

In the Punjab And Haryana At Chandigarh

Case No : S.C.A. No. 329 of 1968 and Civil Miscellaneous No. 3005-C of 1968

Mahant Gurmukh Singh

APPELLANT

Vs

The State of Punjab and Others

RESPONDENT

Date of Decision : 28-11-1969

Acts Referred:

Constitution of India, 1950 — Article 133 , 133(1)
Limitation Act, 1963 — Article 132, 12(3), 5

Citation : AIR 1970 P&H 282

Hon'ble Judges : Mehar Singh, C.J;R.S. Narula, J;P.C. Pandit, J

Bench : Full Bench

Advocate : Puran Chand, for the Appellant; B.S. Dhillon, Advocate-General, for the Respondent

Final Decision : Dismissed

Judgement

R.S. Narula, J.—This order will dispose of Civil Miscellaneous No. 3005/C of 1968, and Supreme Court Application 329 of 1968. The Supreme Court Application has been filed under Article 133(1) (a) and (c) of the Constitution in respect of our judgment, dated 18th March, 1968, whereby we dismissed Civil Writ 1925 of 1964.

2. Civil Miscellaneous 3005/C of 1968, has been filed u/s 5 of the Limitation Act for condoning the delay in submitting the Supreme Court Application. The first contention of Mr. Puran Chand, learned counsel for the petitioner, is that the application for leave to appeal to the Supreme Court has been filed within time as he is entitled to add to the normal period of limitation the entire time which actually elapsed between the date on which he made the application for a certified copy of our judgment in the writ petition, and the date on which he actually obtained the certified copy. It is not disputed that under Sub-section (2) of Section 12 of the Limitation Act, 1963, the petitioner is entitled to add to the normal period of limitation (sixty days prescribed under Article 132 of the Schedule to the Limitation Act) "the time requisite for obtaining a copy" of our

order in the writ petition. The application for certified copy was submitted by the petitioner on April 18, 1968. It is the common case of both sides that the copy was prepared by the office of the Court by May 23, 1968, but when the petitioner wanted to collect the copy, he found that he did not have enough funds to pay for it. Time was taken by the petitioner from May 23, 1968, till August 27, 1968, for arranging for the money requisite for obtaining the copy. On the last mentioned date he paid for the copy and obtained it. The petition under Article 133 of the Constitution was filed by him on September 20, 1968, but was returned by the office to produce the certified copy of the order to enable the Registry to verify limitation. The petition was then re-filed on October 9, 1968. Having been found to have been filed beyond time, the petition was returned on that very day. It was ultimately resubmitted on October 15, 1968 along with the miscellaneous application.

The contention of the learned counsel for the petitioner is that he is entitled to add to the normal period of sixty days, the whole of the period between April 18 and August 27, 1968. If the whole of this period could be added u/s 12(2) of the Limitation Act, the petitioner's application for leave to appeal to the Supreme Court would indeed be within time. Mr. B. S. Dhillon, the learned Advocate-General for the State of Punjab, has contended that the petitioner is entitled to add 36 days (the period between April 18, 1968, and May 23, 1968) to sixty days and he should have filed the application under Article 133 of the Constitution on or before June 22, 1968. Even if it could be argued that the Court was in vacation on the last date of limitation, the petitioner could have availed of the provisions of Section 4 of the Limitation Act, and should then have filed the application on July 8, 1968, i.e., on the re-opening day of the Court. The claim of the petitioner to add time right up to August 27, 1968, has been hotly contested on behalf of the respondents.

3. Mr. Puran Chand has argued that the Supreme Court has held in *State of U.P. v. Maharaja Narain* AIR 1938 SC 960 that a litigant is entitled to the entire time actually spent by him in obtaining the copy and not only the time which was required by the Court for preparing the copy. We have carefully gone through the judgment of the Supreme Court in *State of Uttar Pradesh Vs. Maharaj Narain and Others*, , and are unable to agree with Mr. Puran Chand that any such proposition of law has been laid down by their Lordships of the Supreme Court as is sought to be canvassed before us by the learned counsel.

In the case of *Maharaja Narain* AIR 1960 SC 960 the Supreme Court had set aside and reversed the order of the Allahabad High Court dismissing the State's appeal against acquittal on the ground that though it was within time after adding the period actually spent in the preparation of the certified copy of the lower Court's order filed with the appeal, it was still out of limitation as the State was entitled to a much lesser time which had been taken by the State in obtaining another copy of the same order of the trial Court. The view adopted by the Allahabad High Court was undoubtedly supported by a decision of the Lahore

High Court in Mathela v. Sher Mohammad AIR 1935 Lah 682. In that case also It had been held that the time requisite means simply time required by the appellant to obtain a copy of the decree, assuming that he acted with reasonable promptitude and diligence, and that the time requisite for obtaining a copy is the shortest time during which copy would have been obtained by the appellant, and has nothing to do with the amount of time spent by him in obtaining the particular copy which he chose to file with the memorandum of appeal. While accepting the State's appeal against the decision of the Allahabad High Court, their Lordships of the Supreme Court overruled the Lahore view. No such thing happened in the instant case. The question as to whether the time between, the date on which the certified copy is in fact ready for delivery to the knowledge of the applicant, and the date on which he actually takes delivery of the copy, should or should not be treated as time requisite for preparing the copy never came up for consideration before the Supreme Court in Maharaja Narain's case AIR 1908 SC 960 On the other hand, it is apparent that their Lordships of the Supreme Court did not differ from the view taken by the Judicial Committee ;n Pramatha Nath Roy v. William Arthur Lee 49 Ind.Cas 307=AIR 1922 SC 352. In that case, the Judicial Committee had held that the applicant was not entitled to deduct the time lost due to his own laches, and that the time which need not have elapsed, if the appellant had taken reasonable and proper steps to obtain a copy of the decree or order, could not be regarded as "requisite" within the meaning of Sub-section (2) of Section 12. Their Lordships expressly approved of the view taken by a Full Bench of the Madras High Court in Panjam V. Thirumala Reddi Vs. C.K. Anavema Reddi and Others, to the effect that the words "time requisite for obtaining a copy of the decree, sentence or order" in Section 12(2) of the Limitation Act mean the time beyond the party's control occupied in obtaining the copy which is filed with the memorandum of appeal, and not an ideal lesser period which might have been occupied if the application for copy had been filed at some other date.

The judgment of the Supreme Court is, therefore, of no avail to the petitioner If the view sought to be canvassed by Mr. Puran Chand were to be accepted, it would have to be held, as suggested by the learned counsel, that if after coming to know that the certified copy is ready, the applicant sits at home for six months or a year, and actually chooses to collect the copy after the expiry of that period, he would be entitled to add even those six months or year to the time to which he is entitled for filing the appeal u/s 12(2) of the Limitation Act. This appears to us to be preposterous. We have, therefore, no hesitation in repelling this contention of Mr. Puran Chand, and in holding that the last date for filing the Supreme Court Application in this case was June 22, 1968, after availing of the normal period of sixty days provided under Article 132, and an additional period of 36 days u/s 12(2) of the Limitation Act. The Supreme Court Application was, therefore, filed far beyond time when it was submitted to this Court for the first time on September 20, 1968.

4. Counsel then submitted that we should extend the time for filing the

application under Article 133 of the Constitution up to September 20, 1968, by holding that the applicant was prevented by sufficient cause from filing it any earlier. The only cause which is mentioned in the miscellaneous application is expressed in the following words:--

"That as the charges of the certified copy were more than Rs. 200/-, the petitioner was not able to arrange such a big amount and could only get the copy on August 27, 1968, and the petitioner deserves to be allowed time from the date of application till the date of delivery and if this time is allowed, then the application is within time."

The above quoted averment in the miscellaneous application does not really amount to an explanation for the delay, but is a plea in support of the first submission made by counsel. Even otherwise, we are unable to hold that if an applicant is not able to collect a certified copy for about three months after it is ready to his knowledge because he had to arrange for money to pay the costs of the copy, it would amount to a sufficient cause for delay in filing the petition within the meaning of Section 5 of the Limitation Act. A Division Bench of this Court consisting of Dutt, J. and my Lord P. C. Pandit, J. held in *Punjab State v. Gopal Singh* AIR 1964 P&H 154 that whether the appellant happens to be the State Government and the reason given out for the delay in filing an appeal was that the delay had occurred because on the last day of the limitation, the appellant discovered that it did not have sufficient money to buy the necessary court-fee, but no explanation is forthcoming as to why such state of affairs was allowed to come into existence, the appellant is not entitled to the benefit of Section 5. Though in that case the Government official concerned could not necessarily be expected to pay the money required for court-fee from his pocket, and no latitude was allowed to the Government as no explanation was given for not putting the official concerned in funds within time,, the position is worse in the present case.

Mere non-availability of funds for obtaining the requisite certified copy is, in our opinion, no ground for the extension of time u/s 5 of the Limitation Act. Once it is found that the Supreme Court Application was barred by time, the petitioner has also to explain as to what prevented him from filing the application for leave to appeal to the Supreme Court even after obtaining the certified copy of the judgment on August 27, 1968, till he actually filed it on September 20, 1968. Even a purported explanation for this delay is not forthcoming in the application of the petitioner or the affidavit supporting it. We are, therefore, unable to allow the application u/s 5 of the Limitation Act as there is no valid ground whatever for extending the time under that provision of law.

5. Civil Miscellaneous 3005/C of 1968, Is dismissed for the foregoing reasons. The application for extension of time having been dismissed, Supreme Court Application No. 329 of 1963, also fails and is dismissed as time-barred. Costs of the respondents in the S. C. A. and in the Civil Miscellaneous Application shall be borne by the petitioner.

Mehar Singh, C.J.

6. I agree.

P.C. Pandit, J.

7. I agree.