

(1967) 02 DEL CK 0009

In the Delhi High Court

Case No : Letters Patent Appeal No. 86-D/- 1963 and C.M. No. 442-D of 1963, from decree and judgment of Harbans Singh, J., in S.A. No. 64-D of 1957 D/- 16-1-1962

Matu Ram and Others

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 23-02-1967

Acts Referred:

Citation : AIR 1967 Delhi 58

Hon'ble Judges : I.D. Dua, Acting C.J.; T.V.R. Tatachari, J

Bench : Division Bench

Advocate : R.L. Aggarwal, H.S. Tiagi and S.N. Anand, for the Appellant; S.N. Shankar and Srinivas Rao, for the Respondent

Judgement

(1) In this Letters Patent Appeal, an application has been made u/s 5, Indian Limitation Act, and under Rule 4, Part A (a), Chapter I, Vol. V. Rules and Orders of the Punjab High Court for condoning the delay in presenting this appeal within the period of limitation prescribed by Rule 4.

(2) The facts relevant for considering this application are that the judgment and decree of Harbans Singh J., a Judge of the Punjab High Court, which is appeared against under clause 10 of the Letters Patent of the Lahore High Court, were passed on 16-1-1962. An application for copy of that judgment was made on 19-1-1962 and it was prepared on 9-3-1962. An application for leave to appeal under the Letters Patent was presented on 30-3-1962. This application came up for hearing before Harbans Singh J. On 25-2-1963 and leave was granted by the learned Judge. The appeal complete with court fee was, however, presented in this Court on 7-3-1963. It may be pointed out that the grounds of appeal had, as stated on behalf of the appellants, been attached with the application for leave to appeal as required by the rules.

The period of limitation for this appeal is indisputably 30 days and after deducting the time spent in obtaining leave, the appeal would admittedly be

barred by time by two days. The question Therefore is, is the appellant entitled to condensation of the period taken by him in excess of the requisite 30 days in the circumstances of the present case? The learned counsel for the appellants urges that on 25-2-1963, the learned Single Judge was not inclined to agree with the submission of Shri H.L. Sarin, the learned counsel for the appellants, that after addressing the arguments both the counsel and the Appellants' representative left the court-room under the impression that leave had been refused. It was only when a certified copy of the order dated 25-2-1963 was obtained on 7-3-1963, that the counsel telephoned to his client intimating the effect of the order and pursuant to the client's instructions court fee was provided that very day. It is argued that mistaken impression of the appellants' counsel and of his representative that leave had been refused, though it had actually been granted, constitutes sufficient cause within the contemplation of Section 5 of the Limitation Act and also good cause within the contemplation of Rule 4 of Chapter I-A (a), Punjab High Court Rules & Orders, Vol. V justifying condensation of delay by this Court. (3) It may here be pointed out that under Rule 4, it is expressly provided that no memorandum of appeal under clause 10 of the Letters Patent should be entertained if presented after the expiration of 30 days from the date of the judgment appealed from unless the admitting Bench in its discretion, for good cause shown, grants time for the presentation. In the case in hand, the admitting Bench (D.K. Mahajan and Shamsheer Bahadur J.J) did not grant further time on 1-8-1963 when the appeal was admitted. The Bench on the other hand directed the question of limitation to be settled by the Bench hearing the appeal. In accordance with Rule 4, Therefore this appeal would seem to be barred by time and this Bench would not be authorised to grant further time for the purpose of getting over the time lapsed beyond the period of 30 days.

(4) Shri R.L. Agarwal, however, argues that the expression "admitting Bench" is not defined anywhere and that the present Bench may well be described to be the admitting Bench even though it is hearing this appeal after admission and notice to the other side. As at present advised, I find it somewhat difficult to accede to this submission. The expression "admitting Bench" has a very well recognised concept according to the practice of this Court and it seems to me to be futile to contend that the Bench hearing the appeal after notice should be treated as the admitting Bench for the purposes of Rule 4.

(5) It is next argued that Rule 4 is ultra virus the Letters Patent of the Lahore High Court inasmuch as clause 26 confers jurisdiction on Division Courts to hear causes without any distinction which is sought to be created by Rule 4. It is not disputed at the bar that R.4 has been framed in pursuance of clause 27 of the Letters Patent which authorises regulation of proceedings in the High Court by making rules and orders regulating its practice. The bald submission canvassed by the learned counsel for the appellants has not impressed me and as at present advised, I am unable to hold Rule 4 to be ultra virus on the ground suggested. The respondents' learned counsel, I may point out in this connection

has drawn our attention to *The Union of India (UOI) Vs. Ram Kanwar and Others*, in which this rule has been held to be a special law within the meaning of section 29(2) of the Limitation Act. It is of course true that the Supreme Court in that case was concerned with the validity of this rule in so far as it fixes a period of limitation for preferring Letters Patent Appeals different from that prescribed by the Limitation Act and no question was raised as to its validity in regard to the sole competence of the admitting Bench to condone the delay. But be that as it may, nothing cogent and convincing has been stated on behalf of the appellants for holding the provision authorising only the admitting Bench to grant extension of time to be unconstitutional because of clause 26 of the Letters Patent.

(6) Shri R.L. Aggarwal has also submitted that by virtue of Section 12(3) of the Delhi High Court Act, No. 26 of 1966, this case cannot be heard by this Court. I am unable to sustain this contention either S. 12(2) in my opinion, completely covers the present case. That provision is in the following terms:

"Such proceedings pending in the High Court of Punjab immediately before the appointed day as are certified, whether before or after that day, by the Chief Justice of that High Court having regard to the place of accrual of the cause of action and other circumstances to be proceedings which ought to be heard and decided by the High Court of Delhi shall, as soon as may be after such certification, be transferred to the High Court of Delhi". Indisputably, this case has been transferred to this Court pursuant to certification by the Chief Justice of the Punjab high court within the contemplation of this sub-section and indeed this is not controverted by Shri Agarwal. All that is argued is that S.12(2) must also have some object and such object can be served only if the case like the present is held to be retained within the jurisdiction of the Punjab High Court. The submission seems to be misconceived and is repelled. Shri Shankar draws our attention is to a Single bench decision of the Punjab High court in *Harbans Singh v Karam Chad*, Air 1949 Ep 229, in support of the view that under rule 4, the admitting bench alone can extend the period of limitation and also that the provisions of section 5, Limitation Act cannot apply to cases governed by a special or local law by virtue of section 29 of the Indian Limitation Act of 1908 which Act clearly governs the present case, *Rameshwar Das v. official Receiver*, Delhi 1938 40 PLR 1060: Air 1949 Ep 299 are two bench decisions of the Lahore and East Punjab High courts respectively taking the same view. These decisions have to my knowledge, been followed even in other unreported Bench decisions of the Punjab high Court. (7) Assuming however, that this bench can go into the question of condoning the delay, it is noteworthy that Shri Romesh Kumar Sharma, clerk to Shri H.L. Sarin, Advocate who appeared before Harbans Singh, Advocate who appeared before Harbans Singh J on 25-22-1963 has sworn an affidavit dated 20-7-1963 and stated as follows:

" During the course of the arguments, it appeared that the Hon'ble Judge was not inclined to grant the leave sought for and after passing an order on the file

without announcing it, the Hon"ble Judge handed over the file to the Reader. Hence Shri Lal chand, an employee of the appellants, Mr H.L. Sarin and the deponent left the Court room under the impression that the Hon"ble Judge had dismissed the application under clause 10 of the letters patent. Thereupon on the instructions of Shri Lal chand, the deponent applied for a certified copy of the order dated 25-2-1963 for general use, as Sh. Lal chand had informed the deponent that the appellants would require the said copy of the order for moving the Hon"ble Supreme court of India with a SLP in the above noted case.

It is not uninteresting to note what the affidavit of Lal Chand dated 20-4-1963 shows that according to him, the orders had been reserved by the learned Single Judge. This discrepancy between these two affidavits does tend to the part of Lal chand and his clear misunderstanding as to what actually transpired in the Court,. In these circumstances one would have expected some material emanating from the counsel himself who appeared in the case. But for reasons best known to the appellants, no such material has been placed on the record for throwing them on this aspect. If, as deposed by Romesh Kumar Sharma, the learned Judge had actually passed the orders at that very time, the only safe and proper course was for the counsel or his clerk and also for the appellants" representative to see the actual order and not to go out of the courtroom on an impression formed without looking at the order. Such a course of conduct cannot but be described to be negligent or at least it cannot be considered to be an act done with due care and caution.

Shri R.L. Aggarwal has argued that R.4 is less stringent than Section 5 of Limitation Act and the impression, as pleaded by the appellants, must be held to constitute "good cause" within the contemplation of R.4. I am afraid I cannot persuade myself to hold that failure on the part of the counsel, his clerk, or the appellants" representative on the facts and circumstances of this case to see the order which indisputably seems to have been actually recorded by the learned single Judge soon after hearing the counsel, and to walk out of the Court room forming an impression that the order was against the appellants, can reasonably be held to constitute good cause for the purpose of extending the time fixed by R 4. It must never be forgotten that after the expiry of the period of limitation, a valuable right accrues to the opposite party and his interest cannot be completely ignored when considering the question of good cause under R 4. The scales of justice must be held even by the Court. The considerations in regard to diligence and good faith which weigh with the Court in construing S. 5 of the Limitation Act may well afford helpful guidance in construing R. 4 as well.

Due care and attention should, Therefore, in my opinion, be a condition precedent for sustaining the plea of "good cause" as contemplated by this rule. It is only when due care and attention is shown that this Court would be justified in turning its attention to the exercise of judicial discretion in granting further time. Each case has, of course, to be considered on the merits on its own facts and circumstances. In the case in hand, I do not think it is possible in the

circumstances to exercise judicial discretion in favor of the appellants.

(8) For the foregoing reasons, the application for condoning delay must fail and is hereby dismissed, with the result that the appeal also fails and is dismissed. In the peculiar circumstances, however, the parties are left to bear their own costs.

(9)Appeal dismissed.