(1942) 11 MAD CK 0020

In the Madras High Court

M.S. Venkita Rama Iyer APPELLANT

Vs

Ulattil Pachu's son Kunhi Kandan RESPONDENT

Date of Decision : 06-11-1942

Acts Referred:

Citation : AIR 1943 Mad 313 : (1943) 56 LW 65 : (1943) 1 MLJ 151

Hon'ble Judges : Abdur Rahman, J

Bench : Division Bench

Judgement

Abdur Rahman, J.—The only question to decide in this revision is one of limitation. The suit out of which this revision arises was brought on

the basis of a promissory note executed on the 25th July, 1937. The suit was instituted on the 3rd January, 1941 Apparently, therefore, it would

be barred by time. But the petitioner relies on Section 27 of the Madras Debt Conciliation Act, 1936, and contends that in calculating the period of

limitation, the time during which the proceedings taken by him before the Debt Conciliation Board were pending as well as the time taken by him

for obtaining the certified copies of the order of the Board should be excluded. He made an application to the Board on the 23rd July, 1940, that

is, two days before his limitation for the civil suit expired. He asked for leave to withdraw the application on the 13th December, 1940. This was;

ordered the next day. On the same date he applied for a copy of the order and the order for granting copies was made on the 16th December,

1940. The copy delivered to him shows that it was ready on the 18th December, 1940, but it seems that the Collector signed this copy on the 19th

December, 1940. This shows that the copy was not ready on the 18th December and could only have been ready for despatch on the following day. But it was not sent by post on that day. The post office seal shows that it was actually despatched on the 21st December, 1940. The next day

(i.e., the 22nd December) being a Sunday the copy was delivered to the petitioner on the 23rd December which was the last working day before

the Christmas recess. The suit was instituted by him on the 3rd January, 1941, the date on which the Courts re-opened.

2. The question therefore to decide is whether the petitioner can get the benefit of the time spent by him from the 3rd July up to the 23rd

December, 1940. That he is entitled to exclude the days during which the proceedings were pending before the Debt Conciliation Board is not

open to doubt. Nor can it be disputed that he would be entitled to exclude the time taken "" for the obtaining of certified copies of the order of the

Board "" u/s 27 of the Debt Conciliation Act, 1936. Had he therefore taken delivery of the copies on the 19th December, 1940, he would have

been entitled to exclude that period. But the copy was sent to him by post on the 21st December and delivered on the 23rd of that month. The

question is whether the period from the 20th December, 1940, to the 23rd December, 1940, can also be excluded.

3. Learned Counsel for the respondent contended that the petitioner cannot get credit for these days and that it was his duty to obtain the copies

from the Conciliation Board office on the 19th December, 1940--the date on which they were ready. He* also urged that the post office, under

the circumstances, was his agent and the delivery of the copies to the post office was therefore tantamount to delivery to his agent on his behalf. It

appears, however, that certain rules have been framed by the Government of Madras u/s 29 of the Madras Debt Conciliation Act. Rule 22

provides that

the rules regarding grant of certified copies in Order No. 173 of the Standing Orders of the Hoard of Revenue, as for the time being in force, shall

be followed in granting copies of the records maintained by the Board.

I must therefore look into the Standing Order No. 173 of the Board of Revenue to find as to how the copy had to be delivered to the petitioner.

The Standing Order seems to have been changed from year to year but the last one which is relevant reads as follows:

The copies should then be certified as true under the signature of an officer authorised to do and should be sent to the applicant with the unused

copy stamp papers, if any, by post in an official cover superscribed '' certified copies-service unpaid '' or '' certified copies and copy stamp papers

-service unpaid'' as the case may be.

It was under this rule that the copies were sent to him by post. The rule does not require the petitioner to come and take delivery of the copies

from the Debt Conciliation Board Office but required the Debt Conciliation Board Office on the other hand to send the copies when ready by

post. If that be so, the Post Office must be, under the Standing Order, held to be an agent of the copying department and not that of the petitioner.

The only procedure provided by the Standing Order for the delivery of copies is to send them by post : and the taking delivery by a petitioner

personally from the office is not contemplated at least in the first instance and cannot be insisted upon. In that view the days from the 20th to the

23rd December, 1940, must also be ''excluded. It is hardly necessary to point out that the decisions u/s 12 of the Indian Limitation Act to which

reference was made by Mr. Krishna Variar during his arguments were not relevant in this case. It is the rules framed u/s 27 of the Debt

Conciliation Act that have to be looked at.

4. For the above reasons, the decision of the lower Court must be set aside and the case sent back for disposal after consideration of any other

point or points that may have been raised in the case. The costs of this petition will be costs in the cause.

