

(1985) 07 KL CK 0005

In the High Court Of Kerala

Case No : C.R.P. No. 3273 of 1980 and S.A. No. 20 of 1981

Muthumanakkakath Marihanda Pillai

APPELLANT

Vs

Thattaparambil Avara Devassia and Others

RESPONDENT

Date of Decision : 15-07-1985

Acts Referred:

General Clauses Act, 1897 — Section 10
Limitation Act, 1963 — Section 12, 12(2)

Citation : (1985) KLJ 686

Hon'ble Judges : V. Bhaskaran Nambiar, J

Bench : Single Bench

Advocate : V.N. Swaminathan and A Antony, for the Appellant; Govind Bharathan and V.R. Lekha, for the Respondent

Judgement

V. Bhaskaran Nambiar, J.—If a copy is ready for delivery during the vacation of a court and delivered only on the reopening date, will time run from the date of reopening of court or will it start running when the copy was ready during the vacation? This, in short, is the question raised in these two connected matters. The plaintiff's suit was dismissed on 30-11-78. The application for copy was filed on 2-12-1978. Charges were called for on 23-12-1978. Charges were deposited on 1-1-1979. Date of appearance to receive the copy was fixed as"" 24-4-1979. It was delivered on 21-5-1979. The court had closed for summer recess from 7-4-1979 to 23-5-1979. The appeal was filed on 4-6-1979. As a matter of abundant caution, the plaintiff also filed an application to condone the delay in filing the application. The delay was not condoned and hence the revision against that order. The dismissal of the appeal followed the dismissal of the condonation application. The Second Appeal is filed against that decree.

2. The counsel for the appellant contended that there was in fact no delay in filing the appeal before the lower court, if, only time is calculated to run from the date of reopening of the court, instead of from the date when the copy was ready during the vacation. If this contention is accepted the dismissal of the appeal was

wrong and the S. A. will have to be allowed.

3. Time requisite for obtaining the certified copy of the judgment and decree can be deducted u/s 12 (2) of the Limitation Act. The General Clauses Act provides that when any act or proceeding is directed or allowed to be done or taken in any court or office on a certain day, if on that day the court or office is closed, "the act or proceeding shall be considered as done or taken in due time if it is done or taken on the next day afterwards on which the court or office is open".

4. Section 19 of the Kerala Civil Courts Act enables the High Court to permit "the civil courts under its control to adjourn from time to time for periods not exceeding in the aggregate sixty days in each year". It is admitted that during the relevant year, the High Court had exercised its powers under this section and issued a notification that the Subordinate courts shall be adjourned for the summer vacation from 7-4-1979 to 23-5-1979.

5. Thus the appellant was entitled to receive the copy on the date when the court reopened on 23-5-1979. As he received the copy on 21-5-1979, time in this case will run from that date. He could have, of course, waited till 23-5-1979 without any danger of the period expiring in the meanwhile.

6. But, the court below seems to take the view that though the Court was closed, the office was functioning and therefore the appellant cannot have an extended period of limitation.

7. Section 20 of the Kerala Civil Courts Act provides "the ministerial officers of a court shall perform such duties as may from time to time be imposed upon them by the presiding officer of the court. The court below seems therefore to proceed on the assumption that the benefit conferred by the General Clauses Act cannot apply as the office was not closed. I am afraid, that this construction is somewhat strained, defeats the very object of the provision and lands the litigants and the advocates in unnecessary complications. The duties assigned to ministerial officers of a court during vacation when the court is closed cannot efface the effect of the notification declaring the adjournment of courts during vacation and consequent application of the " relevant provisions of the General Clauses Act.

8. Moreover, Rule 247 of the Civil Rules of Practice also is relevant. Under this rule, copies shall be kept ready for delivery for three clear days other than holidays. Holidays being excluded, in this case, the copy should be deemed to be ready for delivery on the reopening date under this rule as well.

9. Thus on a combined operation of section 12 of the Limitation Act, section 10 of the General Clauses Act, Sections 19 and 20 of the Civil Courts Act and the notifications issued thereunder, it seems to be clear that when a copy is ready for delivery during the vacation of a court, it can be taken delivery of on the date when the court reopens after vacation without losing time, for computation of the period of limitation for filing appeal, revision etc. if however, the copy is actually

received during vacation, time will run from that date on. In view of the fact that ministerial officers may be assigned duty even during vacation, it is open to the office to notify the date of delivery when the copy is ready so that the party, interested, can obtain the copy and take further proceedings during the vacation itself as provided in section 19(2) of the Civil Courts Act. The inaction of the party, however, to receive the copy during vacation cannot adversely affect the party under the Limitation Act

10. The interpretation may not prejudice any party or counsel and does not violate any reasonable acceptable statutory construction. There may be no necessity for the advocate's office to keep vigil during the vacation also to ascertain whether the copy is ready or not.

11. The studious young lawyer appearing for the petitioner, Shri A Antony (Jr.) cited an old decision rendered as early as 1912 in support of his contention.

12. In *Khub Chand v. Harmukh Rai* (I.L.R. 34 All 41), it was held thus:-

Where an application for copies of a judgment and decree was made on the day when the court rose for its annual vacation, it was held that the applicant was entitled to the benefit of the whole period of the vacation, notwithstanding that the copying department was kept open for some days and a notice posted during the vacation that the applicant's copies were ready.

(Head Note)

13. This is in accord with the view I have expressed. In this result, the court below was wrong in dismissing the appeal as time barred and therefore S. No. 20 of 1981 is allowed and AS. No. 105 of 1979 on the file of the Sub Court, Tellicherry, is restored to file and the Subordinate Court, Tellicherry, is directed to dispose of the appeal on the merits. The parties will appear before the Sub Court, Tellicherry, in person or through counsel on 16-9-1985. As no application for condonation of delay was required, C. R. P is unnecessary and it is accordingly dismissed. The order of the lower court on the application for condonation of delay was also unnecessary and that also stands vacated. No costs.