

(1965) 10 P&H CK 0029
In the Punjab And Haryana At Chandigarh
Case No : S.C.A. No. 38 of 1965

Nand Lal and Others

APPELLANT

Vs

The Financial Commissioner and Others

RESPONDENT

Date of Decision : 06-10-1965

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 45 Rule 7

Citation : (1965) 10 P&H CK 0029

Hon'ble Judges : R.S. Narula, J

Bench : Single Bench

Advocate : Roop Chand Chaudhri, for the Appellant; Nemo, for the Respondent

Judgement

R.S. Narula, J.—The judgment and final order of this Court passed in L.P.A. No. 85 of 1965 against which an appeal is sought to be preferred to the Supreme Court, was pronounced on March 3, 1965. Certificate under Article 133 of the Constitution was granted by a Division Bench of this Court on August 3, 1965 permitting the petitioners to file an appeal to the Supreme Court. Requisite steps under Order 45 rule 7 of the CPC had to be taken by the appellants within 90 days or such further period not exceeding 60 days as this Court may upon cause shown¹ allow from the date of the decree-complained of or within six "weeks front the date of the grant of the certificate whichever is the later date. The maximum period of 150 days from the date of decree (final judgment in the Letters Patent Appeal) i.e. 150 days from 3rd March, 1965 expired on July 31, 1965. Six weeks (42 days) from the date of grant of the certificate (from 3rd August, 1965) expired on 15th September, 1965. The office, has reported that inspire of the counsel for the petitioners having been asked by a written communication dated 9th August, 1965 to deposit in this Court the requisite amount of security, advance printing charges and estimate fee, no steps have been taken by the petitioners so far although the prescribed time has since expired.

2. Rule 7 of Order 45 of the Code does not vest in this Court any discretion to

extend the time fixed by that rule any further.

3. Chaudhry Roop Chand, the learned counsel for the petitioners makes an oral prayer for extension of time on the ground that the petitioners belong to Fazilka side and have been uprooted on account of the present hostilities with Pakistan and have not been able to make the requisite deposits within time. The learned counsel states that he himself has received the instructions from his clients that they are in extremely distressed conditions on account of their having been uprooted from their place near Fazilka on account of hostilities with Pakistan. I can take judicial notice of the recent hostilities between this country and Pakistan which commenced on the 5th of August, 1965 when Pakistan attacked some parts of our territory in the Kashmir Valley and I am convinced from the statement of Chaudhry Roop Chand, Advocate that the circumstances in which extension of time is claimed amount to sufficient and cogent reasons for exercise of discretion of this Court to extend the time for a further period of two months from today. The question which, however, arises is whether this Court has any power to exercise any such discretion in any circumstances whatsoever. Rule 3 of Chapter 8-A of Vol. V of the Rules and Orders of this Court is almost a verbatim copy of rule 7 of Order 45 of the Code and does not give this Court any further discretion in the matter. The learned counsel for the petitioners has invited my attention to rule 15 of the same. Chapter which is in the following words:

15. The periods prescribed in Rules 6, 7, 8, 11 and 13 for the several stages in the compilation of the transcript or printed record may, for sufficient reasons, be extended under orders of the Court.

This rule does authorize the Court to extend the time fixed by rule 6 which relates to the initial deposit of Rs. 400 on account of advance printing charges. Rule 15 does not, however, cover the time fixed by rule 3 for deposit of the requisite sum of Rs. 2500 as security for the costs of the respondent.

4. Before the amendment of the CPC by Act 26 of 1920 a period of six. months was prescribed for taking the necessary steps. The Code did not give any discretion to the Court for extending that time of six months. In that state of law, it was held by the Judicial Committee of the Privy Council in *Burjore and Bhawani Per-shad v. Mst Bhagana* 11 Indian Appeals 7, that section 602 of Act 10 of 1887 (corresponding to Order 45 rule 7 of the Code of Civil Procedure, 1908) with regard to extending time for giving security in appeal, is directory only and all though not to be departed from without cogent reasons, the High Court could exercise discretion in extending the time when delay had been satisfactorily accounted for.

5. After the amendment of the Code by Act 26 off 1920 serious doubt lias been expressed whether the discretion vested in this Court to extend time for cogent reasons has not been ousted or in any case restricted to the maximum extent of six weeks under the proviso to amended rule 7 of Order 45 of the Code in addition to the initial period of 90 days from the date of the decree sought to be

appealed against to the Supreme Court.

6. In *Poornananthachi v. T.S. Gopalaswami Odayar*, A. I. R. 1932 Mad 484 it was held that the High Court has no power to extend time for furnishing security beyond the time set out in Order 45 rule 7 of the Code. Subsequently, however, in *Mathukumalli Ramayya v. Vuppalapatti Lakshmayya* A. I. R. 1938 Mad 796 a Full Bench of that Court held that the High Court has power under Rule 9 of the Privy Council Rules to extend the period allowed for furnishing the security and the making of the deposit required by Order 45, rule 7 of the Code beyond the periods mentioned therein, but that the power should not be exercised without some cogent reason. *Tek Chand and Beckett, JJ*, in AIR 1942 279 (Lahore) also held that there being a conflict between Order 45, rule 7 and rule 9 of the Privy Council Rules it is the latter that prevails and, therefore, the High Court can for cogent reasons, extend the time for making the deposit beyond six weeks from the grant of the certificate. In Part II of the Supreme Court Rules, 1950 in Order XII, rule 3 it is provided that where an appellant, who has obtained a certificate from the High Court, fails to furnish the security or make the deposit required, that Court may of its own motion 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 thinks fit "or make such further or other order as the justice of the case requires". The provisions of the above rule appear to correspond to rule 9 of the Privy Council Rules which were in force prior to the enforcement of the Abolition of Privy Council Jurisdiction Act, 1948. I, therefore, think that this Court has the jurisdiction in exercise of its power under Order 12 rule 3 of the Supreme Court Rules to extend the time for making the requisite deposits required under Order 45 rule 7 of the Code. I have already held above that in this particular case there are cogent reasons for doing so and the justice of the case requires that time should be suitably extended.

7. I, therefore, extend the time required for making the requisite deposits under Order 45 rule 7 of the Code read with Order 12 rule 3 of the Supreme Court Rules by another period of two months with effect from today. This order has been passed without notice to the respondent and, therefore, it shall be subject to all just exceptions.