

(1957) 11 P&H CK 0002
In the Punjab And Haryana At Chandigarh
Case No : Civil Revision No. 250/P of 1957

Natha Singh Fauja Singh and Others	Vs	APPELLANT
Tejinder Singh and Others		RESPONDENT

Date of Decision : 15-11-1957

Acts Referred:

Limitation Act, 1908 — Section 12, 12(2)

Citation : AIR 1958 P&H 283

Hon'ble Judges : Bishan Narain, J;A.N. Grover, J

Bench : Division Bench

Advocate : D.S. Nehara, for the Appellant; Dara Singh, for the Respondent

Final Decision : Dismissed

Judgement

Bishan Narain, J.—One Pritam Singh applied in the Court of Assistant Commissioner, Barnala, for partition of certain agricultural lands on the allegation that these lands were held by him jointly with Natha Singh etc. During the proceedings Pritam Singh died and Tejinder Singh applied to be brought on the record claiming himself to be the son and lawful heir of the deceased.

This application was contested by Natha Singh etc. but it was allowed by order dated 19-2-1951. Natha Singh appealed against this order to the Collector, Barnala. This appeal was, however, dismissed on 9-6-1951 on the ground that the Assistant Commissioner had decided the application of Tejinder Singh as a Civil Court and appeal lay only to the District Judge. It appears that no decree was drawn up nor signed by the Assistant Commissioner in pursuance of his judgment dated 19-2-1951.

Natha Singh etc. on dismissal of their appeal applied on 16-6-1951 for the drawing up of a decree. The decree was drawn up and signed on 21-6-1951. Natha Singh etc. applied for a copy of the decree on the same day and it was supplied on 25-6-1951. They then filed an appeal in the Court of the District Judge on 27-6-1951. This appeal was, however, dismissed as barred by time.

Natha Singh filed this revision petition in the then Pepsu High Court. In view of conflicting views taken by various Courts, Gurnam Singh J. referred the case to a Division Bench and it has come before us for decision.

2. It is common ground that in the present case the period of limitation for appeal to the District Judge is laid down in Article 152 of the Limitation Act. Now, Article 152 lays down that the period of limitation for appeal is thirty days and this period starts from the date of the decree or order. In the present case the appeal lies from a decree. Section 33 Civil Procedure Code, provides that a decree shall follow judgment. Order XX, Rule 7, Civil Procedure Code, lays down that the decree shall bear the date on which the judgment was pronounced.

It follows and is conceded before us that by virtue of this provision the decree whenever signed relates back to the date when the judgment was pronounced and that it becomes effective from that date. Thus the decree bears a date which need not be and generally is not the date on which it is actually signed. The result is that the limitation for appeal starts in effect from the date that the judgment is pronounced although the appeal cannot be filed till the decree has been signed by the Judge. In the absence of Order 20, Rule 7, limitation under Article 153 would have started from the date on which the decree was actually signed.

This provision introduces an artificial date from which the limitation starts. In this connection it must be remembered that the CPC and the Limitation Act came into force simultaneously on 1-1-1908 and that the legislature in its wisdom has chosen to fix a date for the start of limitation which is not the date on which the decree is actually signed but in effect is the date on which the judgment is pronounced and the decree is deemed to have been signed. Section 12, however, lays down that certain time should be excluded in computation of the period of limitation. The petitioners claim that u/s 12(2), Limitation Act, they were entitled to exclude the time that elapsed between the pronouncement of the judgment and the actual signing of the decree, i.e., from 19-2-1951 to 21-6-1951. Exclusion of this period is claimed by the petitioners even though they applied for a copy of the decree on 21-6-1951 after it had been actually signed by the Judge.

If the petitioners' contention is accepted, then the appeal would be within time, otherwise admittedly it is barred by time. It may be stated here that the petitioners do not rely on Section 5 or Section 14 of the Limitation Act for extension of time.

The question therefore that requires determination in this case is whether the time that elapsed between the pronouncement of the judgment and the signing of the decree should be excluded from computation of the limitation period u/s 12(2) of the Limitation Act where the application for obtaining a copy of the decree had not been made till the decree had been signed.

3. Section 12(2) of the Limitation Act reads:

"In computing the period of limitation prescribed for an appeal, an application for leave to appeal and an application for a review of judgment, the day on which the judgment complained of was pronounced, and the time requisite for obtaining a copy of the decree, sentence or order appealed from or sought to be reviewed, shall be excluded."

This sub-section does not specifically provide for exclusion of time claimed by the petitioners. They, however, rely in support of their case on the phrase reading:

"the time requisite for obtaining a copy of the decree or order appealed from * *."

This phrase has been the subject matter of construction by various Judges of various Courts at different times and their decisions disclose an acute difference in judicial opinions.

4. Now, it is well established that the provisions of the Limitation Act should be construed according to the strict grammatical meaning of the words used in the statute. It was observed by the Judicial Committee of the Privy Council in AIR 1932 165 (Privy Council)

"The fixation of periods of limitation must always be to some extent arbitrary, and may frequently result in hardship. But in construing such provisions equitable considerations are out of place, and the strict grammatical meaning of the words is the only safe guide."

The Privy Council in AIR 1941 6 (Privy Council) cited with approval the following statement of law by Mr. Mitra in his "Tagore Law Lectures:

"A law of limitation and prescription may appear to operate harshly or unjustly on particular cases, but where such law has been adopted by the State, * * it must if unambiguous be applied with stringency. The rule must be enforced even at the risk of hardship to a particular party. The Judge cannot on equitable grounds enlarge the time allowed by the law, postpone its operation, or introduce exceptions not recognised by it."

It therefore follows; that this phrase should be construed according to the ordinary grammatical meaning of the words used without putting any undue emphasis on any particular word used in the phrase. In construing this phrase equitable considerations are irrelevant. It must therefore be held as established that the ideas of fairness, futility or liberality must be ignored when construing statutory provisions relating to limitation.

5. While dealing with Section 12(2) the Privy Council in Jijibhoy N. Surty v. T. S. Chettyar 55 Ind App 161: AIR 1928 PC 103 observed:

"The word "requisite" is a strong word, it may be regarded as meaning something more than the word "required". It means "property required", and it throws upon the pleader or counsel for the appellant the necessity of showing that no part of the delay beyond the period is due to his default."

In *Pramatha Nath Roy v. William Arthur Lee* 49 Ind App 307; AIR 1922 PC 352 their Lordships of the Privy Council approved the decision of the Calcutta High Court wherein it was laid down that in determining "requisite time" u/s 12(2) the conduct of the appellant must be considered and that in so determining no period should be regarded as requisite under the Act which need not have elapsed, if the appellant had taken reasonable and proper steps to obtain the copy of the order.

It follows that the requisite time is to be determined according to the conduct of the appellant and that this requisite time may not be the same as the time actually taken in obtaining the copy. In my opinion, this provision of law does not lay down any abstract test for determining the requisite time and the decision depends on the circumstances of each case. Two or more persons may apply for a copy of the same decree separately on the same day and yet the actual time taken or the time requisite for obtaining the copy may be different.

I am unable to see how a period of time can be considered to be requisite to obtain a copy when the appellant has taken no steps to obtain it and has not been actually delayed in obtaining it by the delay in signing the decree. In such cases it may happen that a decree may not be signed in fact till the expiry of limitation for filing the appeal, but that need not necessarily affect the rights of the appellant if he files an application for obtaining a copy before the expiry of limitation.

In such a case there is no doubt that the time taken in getting the copy (which can be supplied only after the decree has been actually signed) would, be held to be requisite within Section 12(2) of the Act. Chief Justice Chagla in *Jayashankar Mulshankar and Another Vs. Mayabhai Lalbhai*, has observed that it would be rather futile to apply for a copy of the decree when the original does not exist. With very great respect I am unable to see how this circumstance is relevant for construing the phrase "time requisite for obtaining the copy." There is nothing to prevent a vigilant appellant from applying for a copy of the decree before it has been actually signed. It appears to me that the time requisite for obtaining the required copy depends on the steps taken by the appellant in obtaining the same. There may be cases as noted in the Bombay case where a decree cannot be drawn up or signed without the intervention of the parties. In such a case time taken in getting the decree drawn up and signed may be held to be included in the time requisite for obtaining a copy on the ground that it is a necessary and a requisite step before a copy can be obtained and that without taking such a step it is not possible to obtain such a copy.

It may well be held, though I do not express my final opinion in the matter, that where intervention of a party is necessary under rules of the Court or by the nature of the decree, e. g., a partition decree, that a copy cannot be obtained unless the appellant first takes steps to get it drawn up and signed and therefore the time taken in getting the decree drawn up and signed is covered by the provisions of Section 12(2) of the Limitation Act.

In the present case, however, we are not concerned with such a decree and these considerations have no application. As already stated, in the present case it was the duty of the Court to draw up and sign its decree without the intervention of any party. Such a decree is drawn up without any application by any party, and I am unable to see how when an application is made for this purpose the time taken in its disposal can be considered to be time requisite for obtaining a copy of the decree within Section 12(2) of the Limitation Act.

This sub-section does not expressly or by necessary implication provide for deduction of time taken on this ground. I am, therefore, of the opinion on construction of Section 12(2) of the Act that the time that elapses between the pronouncement of judgment and signing of the decree cannot be excluded in computing the period of limitation for filing an appeal if an appellant has taken no steps to obtain a copy of the decree till the decree is signed.

6. As noticed above, there is a sharp conflict of judicial opinion on this question. The leading case on this subject is a decision of the Calcutta High Court in *Bani Madhub Mitter v. Matungini Dassi* ILR 13 Cal 104. A contrary view was taken by the Allahabad High Court in *Parbati v. Bhola* ILR 12 ALL 79 and *Bechi v. Ahsan-Ullah Khan* ILR 12 All 461 . In the latter case Mahmood J. observed:

"The words "requisite" and "obtaining" as they occur in the context seem to me to assume that some definite step ancillary to the obtaining, that is, acquisition, is not only intended to be taken, but has already been taken. The first step for "obtaining" must be to take some step towards the obtainment, and the act of "obtaining" cannot be said to have been commenced before such step.

* * * * If at the time when the application for a copy is made, the decree is not ready, he will of course be entitled to the allowance of such portion of time during which the decree remains unsigned, along with the time which may be occupied in preparing the copy for delivery; the reason being obvious that the act of obtaining has already commenced and the delay in such a case could not be referred to any omission or neglect on his part. But when he has made no application to obtain a copy and the decree remains unsigned for a portion of, or the whole period of, limitation, he cannot claim the benefit of a matter which in no sense and to no extent frustrated or retarded any endeavour on his part to obtain a copy of the decree, the endeavour itself not having yet commenced."

I am in respectful agreement with this statement of the law. After these Allahabad decisions the preponderance of the judicial opinion, was in favour of the Allahabad view: (vide the judgment of Agarwala J. in *Keshar Sugar Works Vs. R.C. Sharma and Others*, where all these cases are mentioned in detail), it is not necessary to deal with these cases in detail as it appears that most of the Courts changed their view on the basis of the decision of the Privy Council in *Lee* 49 Ind App 307: AIR 1922 PC 352 .

7. It is, therefore, necessary to discuss the effect of the decision of the Privy Council reported in 49 Ind App 307 : AIR 1922 PC 352. This case related to a

decree which under the rules of the Calcutta High Court could not be drawn up and signed without the intervention of "the parties to the litigation. The order under appeal was pronounced by the Calcutta High Court on 26-7-1918. On 6-8-1918 an application was made by the plaintiff to have the decree drawn up and next day the draft was sent to the plaintiff who did not return it till 16-8-1918.

The decree was signed on 28-8-1918 and the appeal was filed on 3-9-1918. The Calcutta High Court held that the appeal was barred by time. The Privy Council approved of the decision of the High Court that in determining requisite time u/s 12(2) the conduct of the appellant has to be seen, and then proceeded, to hold that the applicant was not entitled to deduct the periods between 30-7-1918 and 6-8-1918 and again between 7-8-1918 and 16-8-1918 as those periods need not have elapsed if the appellant had taken reasonable and. proper steps to obtain the copy of the decree.

It appears that in this case the counsel for the appellant argued that the appellant was entitled to deduct the period which was taken by him in getting the decree signed and then again the time taken in obtaining its copy. The Privy Council assuming this contention to be correct dismissed the appeal on the finding that the appellant did not take reasonable steps to obtain the two documents.

It appears to be obvious from the judgment that this decision assumes that the appellant is entitled to deduct the time taken in getting the decree signed and in obtaining its copy u/s 12(2) of the Limitation Act and that it was neither argued before the Privy Council nor did the Privy Council apply its mind to the legal position as to whether the appellant was entitled to get the time taken in getting the decree signed. This was so observed by the Privy Council in 55 Ind App 161: AIR 1928 PC 103 where their Lordships distinctly state:

"It seems to have been assumed that the time properly required for obtaining copies of the two documents was to be excluded, the discussion turning upon the question whether the steps taken by the appellant were sufficiently prompt to entitle him to the benefit of this provision."

It is therefore, clear that the Privy Council never decided the point" as to whether the time taken in getting the decree formulated and signed could be deducted u/s 12 of the Limitation Act, particularly when the Allahabad Full Bench and the preponderance of the opinion expressed by the Indian High Courts at that time was that such time could not be deducted.

8. In this Privy Council case it appears that the appellant had also relied on the decision in ILR 13 Cal 104 for the proposition that u/s 12(2) the time actually taken for obtaining the copies can be deducted. Their Lordships observed that the Calcutta case does not lay down any such proposition. This observation does not, in my opinion, amount to approval of the legal proposition laid down in the Calcutta case and dissented from in the Allahabad case. Their Lordships did not

discuss the proposition as to whether that time taken in getting the decree signed was covered by Section 12 (2) and it would not be right to read such a decision in this judgment. In the present case we are not concerned with the decree which can be drawn up and signed only on the intervention of the parties.

The Privy Council does not lay down anywhere that a party need not take any step to obtain a copy of the decree till it is signed by the Judge, nor does it lay down that the time that elapses between the pronouncement of a judgment and obtaining of a copy can or must be deducted u/s 12 (2). I am, therefore, of the opinion that the decisions of the Privy Council do not support the contention of the petitioners before us.

9. After the decision of the Privy Council there was a distinct change in the judicial opinion in this country. The preponderance of the view is in favour of the contention of the petitioners to the effect that the appellant is entitled to deduct the time that elapses between the pronouncement of the judgment and signing of the decree even if he has taken no steps to obtain copies: vide *Secy. of State and Another Vs. Sm. Parijat Debi and Another*, *Jayashankar Mulshankar and Another Vs. Mayabhai Lalbhai*, *Manoo Rai and Others Vs. Keshwar Rai and Others*, *Arun Chandra Swami v. Md. Majib Choudhury*. AIR 1955 Gwa 129 majority view and AIR 1944 154 (Oudh) The Allahabad High Court however has by a majority view affirmed its previous decision in *Keshar Sugar Works Vs. R.C. Sharma and Others*, and the Nagpur High Court has also accepted this view in AIR 1927 1 (Nagpur) I am in respectful agreement with the view expressed in ILR 12 All 461 and affirmed in, *Keshar Sugar Works Vs. R.C. Sharma and Others*, I am fortified in this decision by the observation of Chagla C. J. in *Jayashankar Mulshankar and Another Vs. Mayabhai Lalbhai*, that the Allahabad view which is contrary to his own view is logically a possible view.

As the judicial opinion is divided in two schools of thought on this point, it is not necessary to discuss these cases in detail. The main line of difference is that the view taken by the Allahabad High Court is based on the strict grammatical meaning of the words used in Section 12(2) while the opposite view mainly rests on equitable considerations. As stated above, I prefer the view taken by the Allahabad High Court in this matter as in my opinion it is in consonance with the principles of construction for Limitation Act laid down by the Judicial Committee.

10. The result is that it must be held that the appeal filed by the petitioners in the Court of the District Judge was barred by time. This petition for revision, therefore, fails and is dismissed with costs.

A.N. Grover, J.

11. I agree.