

(1988) 03 KAR CK 0019
In the Karnataka High Court
Case No : R.S.A. No. 302/1988

Neelavva Kom Yallappa Rotti

APPELLANT

Vs

Bheemappa Mallappa Rotti and Others

RESPONDENT

Date of Decision : 17-03-1988

Acts Referred:

Limitation Act, 1963 — Section 12

Citation : (1988) 1 KarLJ 591

Hon'ble Judges : D. P. Hiremath, J

Judgement

Hiremath, J.-Office has raised objection that there is delay of 5 days in filing this appeal. The judgment from which the present appeal is preferred was delivered on 28-10-1987, decree was signed on 6-11-1987, copy was applied for on 10-11-1987, it was delivered on 23-11-1987 and the appeal came to be filed on 15-2-1988. The office has thus excluded these 5 days in computing the limitation. In the reply that the Appellant's Counsel filed to this objection, the appellants Counsel stated that these 5 days require to be included while computing the limitation. Section 12 of the Limitation Act has an Explanation introduced after there was some controversy, whether such time taken between delivery of judgment and signing of the decree will also be included while computing the limitation. The Explanation says:

"In computing under this section the time requisite for obtaining a copy of a decree or an order, any time taken by the Court to prepare the decree or order before an application for a copy thereof is made shall not be excluded."

These words "shall not be excluded" came for interpretation before the Calcutta High Court in the case of D.S. Jain v. R.K. Jalal-(AIR1970 Calcutta 443) and the learned Judges of the Division Bench observed that the words "Shall not be excluded" in the Explanation meant that the time taken to prepare the decree shall be included in computing the period for obtaining the certified copy. Accordingly, if after the decree or order is prepared, an application is made for copy, then under the Explanation the time taken for the preparation of the

decree or order will be included while computing limitation. Again, if application is made before the preparation of the decree or order, then time under the Explanation as being the requisite for copy will include the time between the pronouncement of the judgment and the date of application for copy, and the rest of the period as may be taken by the Court to prepare decree or order will be the time required for obtaining the copy as provided in Section 12(2).

Appellant's Counsel has urged that these observations aptly apply to the instant case inasmuch as the Explanation clearly states this period shall not be excluded. I am in respectful agreement with the view taken by the Calcutta High Court and the controversy that was existing before the Explanation was introduced, no more exists now. In that view of the matter, 5 days taken for preparing the decree shall be included in computing the limitation and if that is done, it must be said the appeal is well in time. Ordered accordingly.

Post for admission.

Office objection overruled.