

(1984) 02 KL CK 0003
In the High Court Of Kerala
Case No : Unnumbered A.S. of 1983

P.A. Oommen and Others

APPELLANT

Vs

Moran Mar Baselius Mar Thoma Mathews and Others

RESPONDENT

Date of Decision : 09-02-1984

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 41 Rule 1
Limitation Act, 1963 — Section 12, 12(1), 12(2), 12(3)

Citation : (1984) 02 KL CK 0003

Hon'ble Judges : K.S. Paripoornan, J

Bench : Single Bench

Advocate : P.N.K. Achan, for the Appellant; T.S. Venkiteswara Iyer, T.P.K. Nambiar, C.K. Koshy and P. Karunakaran Nair, for the Respondent

Judgement

K.S. Paripoornan, J.—The Plaintiffs in O.S. No. 105 of 1980 of the Subordinate Judge's Court, Mavelikara have filed the above appeal in this Court on 5-11-1983. The Registry pointed out certain defects. One of them was that the appeal is filed out of time. The papers were returned for curing the defects on 22-11-1983. The Advocate appearing for the Appellants re-presented the appeal with the following endorsement: "The above appeal is filed along with an application to receive the same to file. The above application may be sent to the Bench for orders. Other defects are cured." The application referred to is C.M.P. No. 32544 of 1983. It is supported by an affidavit of the 5th Appellant--the 5th Petitioner in the C.M.P. The affidavit is dated 4th November, 1983. The prayer in the petition is to receive the above appeal to file and to grant such other reliefs that are just and proper. It is seen from the endorsement in the appeal memorandum that along with the appeal, the Appellant produced a printed copy of judgment, bearing the seal of the lower court, a certified copy of the decree of the lower court and a petition to receive the appeal to file. It is conceded that if the dates given in the certified copy of the decree filed along with appeal are looked into, the appeal is patently barred. Petitioner's counsel Mr. P.N. Krishnankutty Achan stated that for the reasons stated in the affidavit filed in

support of C.M.P. No. 32544 of 1983, the appeal is not barred. O.S. No. 105 of 1980 was tried and heard along with O.S. No. 21 of 1979. The learned Subordinate Judge. Mavelikara passed a consolidated judgment in the two suits dated 27th of August, 1982. It is the Petitioner's plea that the printed copies of the judgment rendered in the case was applied for by the Plaintiffs in the other connected suit. O.S. No. 21 of 1979, and so the Appellants (Plaintiffs in O.S. No. 105 of 1980) were led to believe that it would not be necessary to obtain the printed copies of judgment separately in O.S. No. 105 of 1980. It is further averred that the Appellants bona fide thought that the copies that would be made available to the Plaintiffs in O.S. No. 21 of 1979 could be made use of by the Petitioners for preferring their appeal. A printed copy of the common judgment in O.S. No. 21 of 1979 and O.S. No. 105 of 1980 applied for, (without the relevant endorsement containing the various dates usually found in the certified copies of the judgments supplied by Courts or Tribunals) was also filed on 5-11-1983. It is stated that the Plaintiffs in O.S. No. 21 of 1979 filed an appeal in this Court on 31-10-1983. If the papers from the Registry are verified, that will be evident. This Court could do so and on that basis for the reasons stated above, the appeal filed may be received to file. Mr. Achan placed reliance on Section 12(2) of the Limitation Act, and argued that the time taken for obtaining the certified copy of the judgment (though obtained by another and not by the present Appellants) should be excluded. This petition is opposed by the Respondents in the appeal who are Respondents in this Civil Miscellaneous Petition. The contentions of the Respondents are similar. On behalf of the 1st Respondent, Mr. T.S. Venkateswara Iyer contended that the appeal is prima facie barred by time. Along with the appeal, a certified copy of the decree alone was filed, which no doubt contain the relevant dates. If those dates are looked into, the appeal is filed out of time. The certified copy of the judgment produced admittedly obtained by the Plaintiff in O.S. No. 21 of 1979, and not by the Appellants herein, and produced along with the appeal, does not contain the relevant dates. There is nothing seen from the papers filed along with the appeal that the appeal has been filed within the time permitted by law. The various averments stated in the affidavit filed in support of C.M.P. No. 32544 of 1983 are not correct. The Respondents have sworn to a counter-affidavit in that behalf dated 25th of January, 1984. It is said that the Appellants filed an application in the lower court to obtain a certified copy of the judgment but since they did not produce the required sheets, the said application was dismissed. It is contended that the reasons stated by Petitioners, for not filing a certified copy of the judgment to show that the appeal is filed within time, does not merit any consideration. The question as to whether the appeal is filed within the time allowed by law should be decided, only with reference to the judgment and or decree filed along with the appeal. On that basis, the appeal filed herein is patently time barred. The Petitioners cannot take advantage of the certified copy obtained by the Plaintiffs in the other case--O.S. No. 21 of 1979. The Plaintiffs in this suit, O.S. No. 105 of 1980, themselves should have filed an application for obtaining a certified copy of the judgment to be appealed against and should

have filed such copy along with the appeal. Even assuming, that a certified copy obtained by the Plaintiffs in O.S. No. 21 of 1970 can be taken advantage of by the Plaintiffs in this suit, such certified copy of the judgment produced along with the appeal should on the face of it show with reference to the relevant dates, that the appeal is filed within time. Admittedly, the certified copy of the judgment, produced in this case, will not show the relevant dates as specified by the rules. It is not open to the Petitioners to contend that the appeal has been filed in time or that the appeal should be taken to file. Mr. T.P. Kelu Nambiar, Advocate who appeared for the 2nd Respondent, Mr. C.K. Koshy, Advocate who appeared for the 3rd Respondent and Mr. P. Karunakaran Nair, Advocate who appeared for the 5th Respondent supported the above contentions of Mr. T.S. Venkateswara Iyer. An adjudication of the rival contentions raised in this case require a perusal of the relevant provisions of Order XLI Rule 1 of the Code of Civil Procedure, Rules 239, 253, 254 and 269 of the Civil Rules of Practice, and Section 12(2) of the Limitation Act, 1963.

Order XLI Rule 1: Form of appeal--What to accompany memorandum.--(1) Every appeal shall be preferred in the form of a memorandum signed by the Appellant or his pleader and presented to the Court or to such officer as it appoints in this behalf. The memorandum shall be accompanied by a copy of the decree appealed from and (unless the Appellate Court dispenses therewith) of the judgment on which it is founded:

(Provided that where two or more suits have been tried together and a common judgment has been delivered therefore and two or more appeals are filed against any decree covered by that judgment, whether by the same Appellant or by different Appellants, the Appellate Court may dispense with the filing of more than one copy of the judgment.)

(2) Contents of memorandum.--The memorandum shall set forth, concisely and under distinct heads the grounds of objection to the decree appealed from without any argument or narrative: and such grounds shall be numbered consecutively.

(3) Where the appeal is against a decree for payment of money, the Appellant shall, within such time as the Appellate Court may allow, deposit the amount disputed in the appeal or furnish such security in respect thereof as the Court may think fit.

Civil Rules of Practice:

Rule 239. Application for copies--(1) Any person entitled to obtain a copy of any proceeding or document filed in or in the custody of the Court, may present an application therefore as in Form No. 47 setting out the name of the applicant, his position in the suit or proceeding if he is a party thereto, and the description of the document of which copy is required.

(2) Copies of Judge's minutes or of correspondence, and other papers not

strictly judicial will be granted only under orders of the fudge.

253. Sealing and certificate.--All copies furnished by the Court shall be certified to be true copies by the officer appointed for the purpose and shall be sealed with the seal of the Court.

254. Endorsement of copies.--Every copy shall bear an endorsement initialed by the Examiner, showing the following particulars:

1. Name of the Court
2. Year and number of the suit or other proceeding
3. Name of applicant
4. Number and date of the application
5. Date of calling for stamp papers
6. Date of production of papers
7. Date of calling for additional papers
8. Date of production of additional papers
9. Date when copy was ready
10. Date notified for appearance to receive the copy
11. Date when copy was delivered.

269. Authentication of printed copies.---On receipt of the printed copies they shall be authenticated and 3 copies shall be delivered to the applicant, one bearing an endorsement of dates as on manuscript copies save that the word "charges" shall be substituted for the word "stamp papers". When several parties apply for copies of the same judgment or order for the purpose of appealing as indicated in Rule 263, each shall be furnished with 3 copies as shown above. The remaining copies shall be placed with the records of the case and each Respondent having a separate interest in the subject matter of the appeal and not being an applicant himself may be given a copy free of cost:

Provided that there should always be not less than three printed copies left among the records for the use of the High Court in the event of the case going before that Court.

Limitation Act 1963:

Section 12. Exclusion of time in legal proceedings--

(1) In computing the period of limitation for appeal or any suit, application, the day from which such period is to be reckoned, shall be excluded.

(2) In computing the period of limitation for appeal or an application for leave to appeal or for revision or for review of a judgment, the day on which the

judgment complained of was pronounced and the time requisite for obtaining a copy of the decree, sentence or orders appealed from or sought to be revised or reviewed shall be excluded.

(3) When a decree or order is appealed from or sought to be revised, or reviewed or where an application made for leave to appeal from a decree or order the time requisite for obtaining a copy of the judgment on which the decree or order is founded shall also be excluded.

Counsel for the Petitioners heavily relied on Section 12(2) and 12(3) of the Limitation Act and contended that the time taken for obtaining the printed copy of the judgment filed along with the appeal (though obtained not by the Appellants) should be excluded in computing the period of limitation. Even assuming that the certified copy of the judgment obtained by the Plaintiffs in O.S. No. 21 of 1979, filed by the Appellants herein, (Plaintiffs in O.S. No. 105 of 1980) could be taken advantage of for the purposes of Section 12(2) of the Limitation Act, it is common ground that the printed copy of the judgment filed along with the appeal does not show the relevant dates. It is not possible to say, whether the appeal is within time on a perusal of the printed copy of the judgment filed along with the appeal. Counsel for the Petitioner then contended that if the facts stated in the petition are taken into account, namely that the Petitioners bona fide believed that the printed copy obtained by the Plaintiffs in O.S. No. 21 of 1979 could be taken advantage of by the Petitioners herein to file the appeal and further if this Court call for the records relating to the appeal filed by the Plaintiffs in O.S. No. 21 of 1979 and peruse the relevant details therein, it will be evident that the appeal is filed within time. I am afraid that the contention of the counsel for the Petitioners cannot bear scrutiny in the light of the relevant provisions of the Code of Civil Procedure, Civil Rules of Practice and Section 12(1), (2) & (3) of the Limitation Act.

2. The fundamental question that arises in this case is whether a person who wants to file an appeal from the judgment of the lower court to this Court, can take advantage of the certified copy obtained not by him, but by somebody else? Under Order XLI Rule 1 the memorandum of appeal shall be accompanied by a copy of the decree appealed from and unless the appellate court dispenses therewith, of the judgment on which it is founded. Rules 239 and 254 of the Civil Rules of Practice contain the relevant provisions for obtaining certified copy shall bear an endorsement initialed by the Examiner showing the following particulars:

1. Name of the Court
2. Year and number of the suit or other proceeding
3. Name of the applicant
4. Number and date of the application
5. Date of calling for stamp papers

6. Date of production of papers
7. Date of calling for additional papers
8. Date of production of additional papers
9. Date when copy was ready
10. Date notified for appearance to receive the copy
11. Date when copy was delivered.

Rule 269 of the Civil Rules of Practice enjoins that three printed copies shall be delivered to the applicant, one bearing an endorsement of dates as on manuscript copies, etc. u/s 12(2) of the Limitation Act in computing the period of limitation for appeal 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 revised or reviewed shall be excluded. The question is whether in the absence of an application by the Appellant himself, or in the absence of a certified copy obtained by the Appellant himself, it is possible for him to take advantage of the provisions of Section 12(2) of the Limitation Act? The Petitioner's counsel contended that the person filing an appeal from the judgment of a court, need not himself obtain a certified copy of the judgment to file an appeal. In other words, he can take advantage of the certified copy obtained by any other, nay even by his adversary. The decisions reported in *T. Aminudeen Sahib Vs. Pyari Bi and Another*, *Ram Kishan Shastri Vs. Kashi Bai*, *Mt. Majidan Vs. Dalmir Khan and Another*, AIR 1934 135 (Lahore), *Purshattam Narayan Vs. Sukan Chand Pannalal and Others*, and *Union of India (UOI) Vs. Ibrahim Gulaba Tobacco Merchant and Others*, were cited in support of the above proposition. There is also a decision of the erstwhile Travancore High Court reported in *Joseph v. Mathai* (55 TLR 187 (FB) taking a similar view. On behalf of the 1st Respondent Mr. T.S. Venkateswara Iyer heavily relied upon the decision of the Judicial Committee reported in 26 CWN 156 (Privy Council) : AIR 1922 352 (Privy Council) . AIR 1928 103 (Privy Council) , *State v. Harishankar* (1971 All L.J. 1205 (F.B.)), and the passages in the Commentaries on Limitation Act by U.N. Mitra, Vol. I. 9th Edn. at page 360 and the passages in the Commentaries, on Law of Limitation by V.G. Ramachandran. Vol. I, 1983 Edn. p. 314. Counsel contended that the Appellant himself should have taken steps to obtain the certified copy of the judgment in order to claim the benefit of Section 12(2) of the Limitation Act.

3. In *Pramatha Nath Roy's Case* (49 Indian Appeals 307), the specific argument advanced before the Judicial Committee was that having regard to Section 12(2) of the Limitation Act the Appellant was under no obligation to apply to have the order drawn up since the Respondent in the case had already applied therefore and that in any way he was entitled to the benefit of the one month as provided by Rule 27 Chapter IV of the High Court Rules. Lord Buckmaster, delivering the judgment of the Board, held at page 310:

Now the learned judges in the Appeal Court have held that in determining what is the requisite time referred to in Section 12, Sub-Section 2, of the Limitation Act the conduct of the Appellant must be considered, and their Lordships think that in so determining they have rightly regarded the statutory provision. In their Lordships' opinion, no period can be regarded as requisite under the Act which need not have elapsed if the Appellant had taken reasonable and proper steps to obtain a copy of the decree or order. In the present case he took none, and the periods between July 30 and August 6, and again between August 7 and August 16, which were within the Appellant's control, are sufficiently great to prevent the Appellant saying that the time that did elapse must have elapsed even if he had acted with reasonable promptitude.

In AIR 1928 103 (Privy Council) : AIR 1928 103 (Privy Council) the Judicial Committee adverted to the various decisions dealing with the scope of Section 12(2) of the Limitation Act and held as follows:

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

A Full Bench of the Allahabad High Court in State v. Hari Shankar (1971 All. L.J. 1205 (F.B.)) at page 1209 observed:

When Sec. 12(2) of the Act speaks of "time requisite for obtaining a copy of the decree, sentence or order appealed from", it has in our opinion reference to the necessity of the Appellant, to the indispensability of the copy for him and to the time spent by him in obtaining it. The provision does not contemplate exclusion of time, in computing the limitation, not spent by him but by a party whose interest, as opposed to his own, lies in the judgment, order or decree being maintained. In our judgment on a true and correct interpretation of Section 12(2) of the Act the time requisite for obtaining a copy of the judgment, decree or order appealed against is the time beyond the Appellant's control occupied by the Copying Department after an application for certified copies has been duly made by or for the benefit of the Appellant and not the time spent in obtaining it by a party who cannot even be said to have been impliedly acting on his behalf.

The editors of U.N. Mitra's Law of Limitation. 9th Edn. at page 360 have expressed the view that:

The word "requisite" implies properly required by the Appellant or applicant.

In his book on the Law of Limitation. Vol. I. V.G. Ramachandran at pages 313 and 314 has adverted to the various aspects of the matter and has opined that the "decisions which say that the Appellant may claim deduction of time even if he had used the copy obtained by another" seem to go against the basic reasoning of the decision of the Privy Council in Pramatha Nath Roy's case (40 Indian Appeals 307) and has further observed as follows:

It is the Appellant who takes some steps to get a copy who can claim the benefit of Section 12. A Respondent or any other stranger getting a copy is not a step taken by the Appellant. No agency can be imputed by the Appellant in respect of the stranger applicants. To give the benefit of other's actions to an Appellant is giving something not contemplated by Section 12. This is not a case of the benefit of interpretation going to the Appellant in cases of doubt. It will tantamount to encouraging an Appellant who has slept and wants to profit by others' actions. That he has been allowed to use their copies is the utmost concession that can be extended to him. He cannot claim deduction of time arising from the facts of those copy applications preferred by strangers.

It seems to me that the view expressed by the editors of Mitra on Limitations, and by Mr. Ramachandran in his book on Law of Limitation are in accord with the observations of the Judicial Committee contained in the decisions reported in 26 CWN 156 (Privy Council) and also AIR 1928 103 (Privy Council) . The view so expressed seems to be implicit from the statutory language contained in Sections 12(2) and (3) of the Limitation Act. It is common ground that the certified copy of the judgment, filed in this case is not the one applied for or on behalf of the Appellants and obtained by the Appellants herein. The Appellants cannot take advantage of the certified copy of the judgment obtained by another person. On this short ground, the prayer in C.M.P. No. 32544 of 1983 deserves to be rejected.

4. Counsel for the 1st Respondent, Mr. T.S. Venkateswara Iyer, contended in the alternative, that even assuming that the decisions cited by the Petitioner's counsel reported in T. Aminudeen Sahib Vs. Pyari Bi and Another, , Ram Kishan Shastri Vs. Kashi Bai, , Mt. Majidan Vs. Dalmir Khan and Another, , AIR 1934 135 (Lahore) , Purshattam Narayan Vs. Sukan Chand Pannalal and Others, and Union of India (UOI) Vs. Ibrahim Gulaba Tobacco Merchant and Others, and also the decision in Joseph v. Mathai (55 TLR 187 (FB) can be pressed into service for the purpose of contending that the certified copy of the judgment obtained by a stranger can be filed or taken advantage of by the Petitioners herein for the purpose of filing their appeal, even then, the certified copy of the judgment filed along with the appeal should on the face of it indicate the relevant dates which will be endorsed in the printed copy of the judgment as enjoined by Rule 254 of the Civil Rules of Practice. In other words, counsel contended that the question as to whether an appeal is filed within time should be decided not by reference to any other document or by any other evidence or material, but should be solely decided on the basis of the certified copy of the judgment and/or decree filed along with the appeal. That this is the law has been so clearly stated in the Full Bench decision of the Madras High Court in the decision reported in Panjam V. Thirumala Reddi Vs. C.K. Anavema Reddi and Others, , the decision of Travancore High Court reported in Kanju Kesavan Vs. M.M. Philip , the decision of the Allahabad High Court reported in State Vs. Kashi Prasad, , and of the Andhra Pradesh High Court reported in Kolikipudi Atchamma and Others Vs. Kolikipudi Ketu and Another, . Except the later decision of the Andhra Pradesh High Court

referred to above, the other decisions were cited with approval in the decision reported in *State of Uttar Pradesh Vs. Maharaj Narain and Others*, . In that decision Hegde J. delivering the judgment of the Bench observed as follows at page 962:

Preponderance of the judicial opinion is in favour of the conclusion reached by us earlier. The leading case on the subject is the decision of the Full Bench of the Madras High Court in *Panjam V. Thirumala Reddi Vs. C.K. Anavema Reddi and Others*, , wherein the Court laid down that in Section 12 the words "time requisite for obtaining a copy of the decree" mean the time beyond the party's control occupied in obtaining the copy which is filed with the memorandum or appeal and not an ideal lesser period which might have been occupied if the application for the copy had been filed on some other date.

In C.M.P. No. 26198/82, a Division Bench of this Court, after referring the decision of the Supreme Court in *State of U.P.'s case* (1968 SC 960), held:

If we go by the copies produced along with the appeal viz., the copies of the judgment and decree produced the appeal is hopelessly out of time. Perhaps the Appellant could have saved the appeal if there was a case that printed copy of the judgment is requisite for filing an appeal, that he had applied for the printed copy in time, that he had not defaulted in obtaining the copy and that if reckoned on the basis of such copy the appeal was within time. No such copy of the judgment with the dates showing the respective dates of application and other relevant facts has been filed before us. Rule 269 of the Civil Rules of Practice contemplates delivery to the applicant of three printed copies of the judgment one of which should bear an endorsement of dates on manuscript copies that would necessarily show the time requisite for obtaining printed copies of the judgment. Such a copy has not been so far produced in the case. Therefore there is no question of excusing the delay with reference to any such copy. We have only to reckon time on the basis of the certified copies of the judgment and decree produced in the case. If so the appeal is barred.

The reasoning and conclusion of the Division Bench, in C.M.P. No. 26198 of 1982 in A.S. No. 231 of 1977 fully applies to this case. In this case, the certified copy of the decree filed along with the appeal would show that the appeal is patently barred. The certified copy of the judgment filed does not even contain the relevant dates. So, on the alternative ground also, it cannot be contended that the appeal should be taken to file. On this ground as well, the Petitioners are not entitled to succeed.

Before closing, it remains to consider the exact scope of the relevant decisions relied on by Petitioner's counsel and referred to in para 3 supra to the effect that the certified copy obtained by a stranger can be made use of, in filing an appeal by the Petitioners. In the case reported in *Ram Kishan Shastri Vs. Kashi Bai*, the question was, as to whether the application made by the Vakil's clerk could be said to be on behalf of the party who filed the appeal. In cases, where it could be

established that the certified copies were duly applied for as authorised by the Appellant or by some other person acting on behalf of the Appellant, as an agent, expressly or impliedly or as authorised by law, it could be contended that though the Appellant was not so nomine a person who applied for the certified copy, he should get the benefit as enjoined by Section 12(2) of the Act Any person can act on his own or on behalf of another, when expressly or impliedly authorised by that other. So, a person can appoint an agent to act on his behalf. In some cases, eg. co-owners or partners,--every co-owner or partner is ordinarily presumed to act on behalf of the other co-owner or partner also. The ratio of the decision of the Allahabad High Court in State v. Hari Shankar (1971 Allahabad Law Journal 1205 at p. 1209) to the following effect is pertinent.

In our judgment on a true and correct interpretation of Section 12(2) of the Act the time requisite for obtaining a copy of the judgment, decree or order appealed against is the time beyond the Appellant's control occupied by the Copying Department after an application for certified copies has been duly made by or for the benefit of the Appellant and not the time spent in obtaining it by a party who cannot even be said to have been impliedly acting on his behalf.

In my opinion, the above observations clearly lay down the law. Few of the decisions relied on by the Petitioner's counsel (See para 3 supra) can be explained on the lines indicated herein-above in this paragraph. It is common ground, that the Petitioner will not answer the description or category enunciated herein above, in this paragraph. On the other hand, if the above decisions relied on by Shri Achan, lay down that even in cases not governed by the aforesaid principle laid down by the Allahabad High Court, it is open to the Petitioners to take advantage of the certified copy obtained by some other person, "who is a total stranger", then with great respect, I should record my respectful dissent from the aforesaid decisions. The observations contained in those decisions, if they go to the extent of stating that the certified copy of the judgment obtained by a "total stranger" or "a person who is not intimately connected with the Appellant" could be taken advantage of by the Appellant, it seems to me that such decisions will militate against the ratio of the decisions laid down by the Judicial Committee of the Privy Council in the decisions reported in Pramatha Nath Roy's case (49 India Appeals 307) and AIR 1928 103 (Privy Council) and also the provisions of Section 12(2) and (3) of the Limitation Act.

In the result, the Civil Miscellaneous Petition No. 32544 of 1983 is rejected.