
(1969) 02 P&H CK 0039

In the Punjab And Haryana At Chandigarh

Case No : Letters Patent Appeal No. 372 of 1968

Pirabhu

APPELLANT

Vs

Bhirkha and others

RESPONDENT

Date of Decision : 24-02-1969

Acts Referred:

Limitation Act, 1963 — Section 5

Citation : (1970) 2 ILR (P&H) 184

Hon'ble Judges : Shamsheer Bahadur, J; R.S. Narula, J

Bench : Division Bench

Advocate : V.D. Gaur, for the Appellant; Roop Chand, for the Respondent

Final Decision : Dismissed

Judgement

Shamsheer Bahadur and R.S. Narula, JJ. (29.01.1969)

1. Pirbhu instituted a suit for possession of agricultural land in village Madina - Gaindran against Birkha and others on the ground that he had been forcibly removed from it. The defendants pleaded limitation and adverse possession. Though the trial Court decreed this suit it was dismissed by the decree of the lower Appellate Court Sarkaria J. in Regular Second Appeal No 640 of 1962, dismissed the appeal of Pirbhu on 25th January, 1968. The copy of the judgment of Sarkaria J. which was applied for on 27th of January, 1968, was ready for delivery on 13th of March, 1968. Under rule 4 of the Rules and Orders of the Punjab High Court, Volume V, Chapter 1-A:

No memorandum of appeal preferred under clause 10 of the Letters Patent shall be entertained if presented after the expiration of 30 days from the date of the judgment appealed from unless.....Such memorandum of appeal need not be accompanied by a copy of the judgment appealed from, but a memorandum of appeal for which a certificate is required under clause 10, must contain a declaration to the effect that the Judge, who passed the judgment, has certified that the case is a fit one for appeal. The time spent in obtaining the certificate

from the Judge (including the date of application and the date on which the Judge passed to order) shall be excluded in computing the period of limitation.

2. The last day for filing the letters patent appeal, taking into account the time spent in obtaining the copy of the judgment, was 15th of April, 1968. On that date an application for the grant of certificate was made and this was admittedly within time. The certificate was granted by the learned Judge on 12th July, 1968. As the applicant has exhausted the permissible period for copies, the letters "patent appeal had to be filed on 12th of July, 1968. This however, was not done and the appeal was filed on 15th of July, 1968. In the application u/s 5 of the Limitation Act for condonation of delay, it is pleaded that 13th and 14th of July, 1968 were holidays and the appeal was filed on the 15th as copies of judgment of Sarkaria J. and other papers had to be typed.

Both the letters patent appeal and the application for extension of time were admitted by a Motion Bench on 9th of October, 1968. It is only the application u/s 5 of the Limitation Act which is before us for disposal.

According to Mr. Gaur, much typing work had to be done before the appeal could be filed and "getting the above material typed, compared and arranged in proper order could not be completed by 4 p. m. on the 12th July, 1968.

It is to be borne in mind that the appellant had taken a calculated risk in filing the application for the grant of certificate on the last day of limitation. It should have been anticipated that the work after the grant of certificate would take more than a day and in failing to keep even a day's margin the appellant could not be said to have exercised the diligence which was expected from him. Our attention has been drawn to a Supreme Court decision in *Ramlal, Motilal and Chhotelal Vs. Rewa Coalfields Ltd.*, where it was observed by Gajendragadkar J. (later Chief Justice of India) that:

The failure of appellant to account for his non-diligence during the whole of the period of limitation prescribed for the appeal does not disqualify him from praying for the condonation of delay u/s 5.

It is the submission of the learned counsel that even though the appellant filed the application for certificate on the last day of limitation, this inactivity should not be taken into account in his present application u/s 5. It was within the appellant's knowledge that in making the application just in time he had exhausted the period of limitation for appeal, and it was his bounden duty in the circumstances to make arrangements for the filing of the appeal on the day when the certificate was granted. The judgment of Sarkaria J. and the memorandum of appeal did not involve much of typing work; at any rate, this difficulty was surmountable and should have been anticipated. As observed by Mr. Justice Venkatarama Ayyar in *Dinabandhu v Jadumoni* AIR 1951 S.C. 411, "the words "sufficient cause" should receive a liberal construction so as to advance substantial justice when no negligence nor inaction nor want of bona fides is imputable to the appellant". "Sufficient cause" is related, in other words, to the

diligence shown by the delinquent party. In the present instance, we do not see that the appellant is entitled to any indulgence, and we would accordingly dismiss this application u/s 5 of the Limitation Act. In the circumstances, we would make no order as to costs. Let the Letters Patent Appeal be listed for disposal separately.

Shamsher Bahadur, J.

3. This should be read in continuation of the order passed by us on 29th January, 1969, in Civil Miscellaneous 4551 of 1968, disallowing the claim of the applicant for condonation of delay u/s 5 of the Limitation Act in filing the Letters Patent Appeal 372 of 1968. The appeal in the normal course would have been dismissed automatically, but Mr. U.D. Gaur, learned counsel for the appellant, has vehemently argued that the application u/s 5 of the Limitation Act had been made inadvertently and that the appeal was not, in fact, barred by time. If the contention of Mr. Gaur is correct, then the application for condonation of delay and the decision thereon given by us on 29th January, 1969, would of course be treated as superfluous.

4. To recapitulate the facts the judgment of the learned Single Judge was delivered on 25th January, 1968. The application for certified copies was made on 27th January, 1968. The copy was supplied on 13th March, 1968. The application for the grant of a certificate for leave to appeal was filed on 15th April, 1968. It is common ground that the application was filed in time in view of the provisions of section 4 of the Limitation Act which says that if the last day of limitation falls on a Court holiday, the appeal or application may be preferred on the next working day. Normally, the limitation for appeal and application expired on the 12th of April, 1968, but 13th and 14th being holidays, the application was filed on 15th April, 1968. The certificate was granted by the learned Judge on 12th July, 1968. 13th and 14th of July, were holidays and the Letters Patent Appeal was actually filed on 15th July, 1968. It is pointed out by Mr. Gaur that under rule 4 of Chapter I-A of the Rules and Orders of the Punjab High Court, Volume V, relating to the Letters Patent Appeals "the time spent in obtaining the certificate from the Judge (including the date of application and the date on which the Judge passed the order) shall be excluded in computing the period of limitation". The submission of the learned counsel is that if both 15th of April, 1968, when the application was made and 12th of July, 1968 when the certificate was granted are excluded, the appeal would be within time considering that the application made for the grant of certificate was in time. In reaching this conclusion, we will have to accept the position of the appellant that he is entitled to take advantage of the provisions of section 4 of the Limitation Act twice over. All that section 4 of the Limitation Act says is-

Where the period of limitation prescribed for any suit, appeal or application expires on a day when the Court is closed, the suit, appeal or application may be instituted, preferred or made on the day that the Court re-opens.

As is well known, this section does not, in any way, extend the period of limitation nor does it furnish any data for computation of time. What it really does is that if the time allowed by statute to do an act or to take a proceeding expires on a day when the Court is closed, it may be done on the next sitting of the Court. Allowing the days in obtaining certified copy of the judgment, the application for the grant of certificate was filed on the last day availing the advantage u/s 4 of the Limitation Act. Forty-seven days were expended in obtaining a certified copy. Adding this to the period of limitation, which is thirty days, the applicant could have availed of seventy-seven days" period of limitation and this expired on 12th of April, 1968. That being a holiday and also the subsequent two days, the application of 15th of April, 1968, was filed within time.

5. No Letters Patent Appeal under rule 4 of Chapter I-A of the High Court Rules and Orders, Volume V, "shall be entertained if presented after the expiration of 30 days from the date of the judgment appealed from" and the time spent in obtaining the certificate from the Judge has to be excluded in computing the period of limitation. What is the combined effect of the two? The period of limitation has to be computed separately in the case of an appeal and time will start running from 25th of January, 1968, when the judgment of the Single Bench was delivered. It is common ground that if the period is computed on this principle the last day for filing the appeal was 11th of July, 1968. The appellant cannot take advantage of the fact that the certificate was actually granted on 12th of July, 1968, and that day should be excluded from reckoning and the following two days, namely, 13th and 14th of July, 1968 were holidays.

6. Mr. Gaur has relied on a Division Bench judgment of Chief Justice Bhandari and Tek Chand, J. in *Mt. Chinto v. Narinjan Singh*³, where it observed by Chief Justice Bhandari, speaking for the Court,-

It is of the essence of the law of limitation that time begins to run under it as to a cause of action the moment the right to sue has fully accrued or the moment the right to commence an action has come into existence. If there is a condition precedent to the right of action the cause of action does not accrue and the limitation does not begin to run, until that condition is performed.

7. The cause of action arose to the appellant when the judgment of the learned Single Judge was delivered. True, he had first to obtain the requisite certificate from the Judge for leave to appeal, but if he delayed this matter till the last day of limitation by taking into account the enabling provision of section 4, he cannot subsequently annex another set of holidays to bring the period of limitation up to 15th of July, 1938, If that was so, it would lead to the anomalous situation that a party can take advantage of the provisions of section 4 twice over. The misfortune, if any, of the appellant is to be attributed to his decision to take action on the last day of limitation for obtaining leave. The appellant should have known that the time for appeal had already expired and only the holidays from 12th to 14th of April, 1968, made his application for leave in time. The attendant

difficulties like the one presented before us should have been anticipated by the appellant who cannot be said to have been penalised by circumstances or events beyond his control. With regret we cannot accede to the submission of Mr. Gaur and must hold that the appeal was filed beyond time. We are unable to review our order dismissing his application for condonation of delay.

8. In the result, this appeal fails and is dismissed without any order as to costs.

R.S. Narula, J.

9. I agree.