
(1966) 02 CAL CK 0022
In the Calcutta High Court
Case No : Civil Rule No. 4434 (F) of 1965

Pranlal Jethalal

APPELLANT

Vs

Narayan Prosad Ruia

RESPONDENT

Date of Decision : 01-02-1966

Acts Referred:

Limitation Act, 1963 — Section 12, 5

Citation : 70 CWN 497

Hon'ble Judges : P.N. Mookherjee, J;A.C. Sen, J

Bench : Division Bench

Advocate : Dwijendra Narayan Ghosh, for the Appellant;Chandidas Roy Chowdhury, for the Respondent

Judgement

1. This Rule raises a question of some importance under the law of limitation. The Rule was issued, calling upon the opposite party to show cause why the connected appeal should not be registered as having been duly presented in time or why the delay, if any, in the matter of such presentation should not be condoned under sec. 5 of the Limitation Act. The matter arises in this way : The appeal is directed against a decree for ejectment, passed by the learned trial Judge. The judgment was delivered by the said learned Judge of the local City Civil Court on September 23, 1965. The City Civil Court remained closed for the Puja Vacation from September 24, 1965, to October 26 of the same year, both days inclusive, and it reopened on October 27, 1965, on which date, the petitioner applied for certified copies of the above judgment and the decree, following the same. The copies were obtained on November 19, 1965, and the present appeal was filed on that very day. The learned Stamp Reporter of this Court, upon the view that, in the above circumstances, the appellant was not entitled to deduction of the period of long vacation of the trial court, namely, from September 24 to October 26, 1965, recorded the conclusion that the appeal was out of time by 3 days and returned the memorandum of appeal to the learned Advocate on December 10, 1965, for presentation to the Court u/s 5 of the Limitation Act. Thereafter, on the very same day, that is, on December 10,

1965, the appeal was presented to this Court with on application u/s 5 of the Limitation Act for condoning the delay, if any, in the matter of presentation of the said appeal with the further contention that the instant appeal had been filed within time and, accordingly, the appellant did not need any extension of time under the said section.

2. The points, which thus arise for our consideration, are whether, in the above circumstances, the period of the long vacation of the trial court, namely, from September 24 to October 26, 1965, should be excluded ; if not, whether the appellant is entitled to the necessary extension of time u/s 5 of the Limitation Act to cover the delay of 3 days, as reported by the learned Stamp Reporter of this Court. In our view, the deduction of time claimed by the appellant, namely, of the long vacation of the trial court, as mentioned above, should be allowed. The judgment of the learned trial Judge was pronounced on the closing day of the court. The application for copy of the judgment and of the decree was made on the reopening day, that is, at the earliest possible opportunity. It is well settled that, in these circumstances, the entire period of the intervening long vacation should be excluded in the matter of computation of limitation as time requisite for obtaining copies u/s 12 of the Limitation Act (Vide, in this connection, the cases, cited hereinbelow). Indeed, any other view would have led to an absurdity and obvious injustice and would have been opposed to sound judicial principles. Cases have even gone further and, even where the application for copy was not made on the reopening day but within a reasonable time thereafter, the appellant was held entitled to deduction of the entire period from the date of delivery of the judgment until the day of application for the copy as time requisite for obtaining the same (Vide *Debi Charan Lal v. Sheik Mehdi Hussain* [1916], 20 CWN 1303).

3. For our present purpose, it is not necessary to express any final opinion on the correctness or otherwise of the decisions on this last question. But, it is enough to say that, when the judgment is delivered or the decree is signed on the last working day of the court, preceding holidays or a vacation, and the application for copy or copies is made on the reopening date, that is at the earliest possible opportunity, the intervening holidays or vacation are to be excluded as time requisite for the said copy or copies u/s 12 of the Limitation Act. In this view, we are supported by the decision of the Madras High Court, reported in *Saminatha Ayyar v. Venkatasubba Ayyar*, ILR 27 Madras 21, and the decision of this Court, reported in *Sri Chandan Bhuya and others v. Haroo Sheik and others*, 13 C.L.J. 544. As we have said above no other conclusion is reasonably possible under the circumstances or on principle. We, accordingly, hold that the present appeal was filed within time and the learned Stamp Reporter's report to the contrary was not correct. Let the appeal be registered, if otherwise in form, as having been duly presented.

In the above view, it is unnecessary for us to express any opinion on the other question, namely, u/s 5 of the Limitation Act for condonation of dealy, if any. But,

if we felt the necessity of it, we should have been inclined to allow requisite extension of time to the appellant under that section too.

In the premises, this Rule is made absolute. The appeal is directed to be registered, if otherwise in form, and it will thereafter proceed in accordance with law.

[The rest of the judgment relates to certain directions given in the matter and the same is omitted--Ed.]

A.C. Sen, J.

I agree.