
(1952) 05 RAJ CK 0010
In the Rajasthan High Court
Case No : Civil Certificate Case No. 4 of 1952

Rajasthan State	Vs	APPELLANT
Nathmal and Another		RESPONDENT

Date of Decision : 13-05-1952

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 3 Rule 1, Order 3 Rule 4
Constitution of India, 1950 — Article 132, 133, 226
Limitation Act, 1908 — Section 12(2)

Citation : AIR 1952 Raj 180 : (1952) RLW 511

Hon'ble Judges : Wanchoo, C.J;Bapna, J

Bench : Division Bench

Advocate : L.N. Mutha, for the Appellant; Hastimal, for the Respondent

Judgement

Wanchoo, C.J.—This is an application by the State of Rajasthan for leave to appeal to the Supreme Court under Articles 132 and 133 of the Constitution of India.

2. The application has been opposed on behalf of the opposite party on two technical grounds, namely,

1. that it is barred by limitation, and

2. that it has not been properly presented. Learned counsel for the opposite party agrees that but for these two technical matters, the case is a fit one for granting leave under Articles 132(1) and 133(1)(c) of the Constitution.

3. The case arose on an application under Article 226 of the Constitution by Nathmal and Mithalal. That application was allowed on the 19th October, 1951. The present application was filed on the 30th of January, 1952. It is contended on behalf of the opposite party that the application is barred by limitation for two reasons

1. that the applicant is not entitled to any deduction of time taken in obtaining a

copy of the judgment to be appealed from u/s 12 of the Limitation Act, and

2. that, in any case, Mithalal having been brought on the record on an application, dated 5th March, 1952, the application was barred against him.

4. Articles 132 and 133 of the Constitution provide for appeal to the Supreme Court from any judgment, decree or final order of a High Court. The relevant provisions of Section 12 of the Limitation Act in this connection are these :

"2. 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.

3. Where a decree is appealed from or sought to be reviewed, the time requisite for obtaining a copy of the judgment on which it is founded shall also be excluded."

5. The contention on behalf of the opposite party is that this case is covered by Section 12 (2), and the time taken in obtaining a copy of the judgment cannot be excluded. We have already pointed out that the judgment was delivered on the 19th October, 1951. Application for copy was made on the 15th January, 1952, and copy was delivered on the 30th January, 1952. The application for leave to appeal was presented on the same day, namely, the 30th of January, 1952. Now if the period spent in obtaining the copy is excluded", the application would be within time, on the 30th of January. The question is whether this period can be excluded under Sections 12 (2) or 12 (3) of the Limitation Act.

6. There is difference of opinion among the various High Courts as to whether the time taken in obtaining copy of the judgment can be excluded in cases of application for leave to appeal. Some High Courts, as for example Allahabad, have held that as Sub-section (2) expressly contains the words "application for leave to appeal", while Sub-section (3) does not, the time spent in obtaining copy of the Judgment cannot be allowed in cases of applications for leave. Vide -- Gulab Chand and Others Vs. Peary Lal, Other High Courts have held that time taken in obtaining a copy of the judgment can be allowed under Sub-section (3) Vide -- "In re, In Re: The Secretary of State for India in Council, We do not think it necessary to decide in the present case whether time for obtaining a copy of the judgment can be excluded in a case where there is a judgment as well as a decree following it. The present is a case, in our opinion, where there is no decree following the judgment of this Court. The application of the opposite party was under Article 226 of the Constitution of India, and was disposed of by the judgment dated the 19th October, 1951. Both Articles 132 and 133 allow appeals from a judgment, decree or final order of a High Court. It may be mentioned that in Section 109 of the Code of Civil Procedure, the words used were "decree" or "final order", and the word "judgment" has been added by Articles 132 and 133 of the Constitution.

It seems to us that the word "judgment" has been added to provide for cases coming to the High Court under Article 226 of the Constitution of India. In cases under Article 226, there is no decree. The application is disposed of by a judgment of the court, and it is that judgment, in our opinion, which is liable to appeal under Articles 132 and 133. Section 12(2) of the Limitation Act allows exclusion of time for copy of a decree, sentence or order. The word "decree" is well understood, while the word "sentence" refers to criminal proceedings. The word "order" used in Sub-section (2), in our opinion, must cover judgments in cases under Article 226 of the Constitution of India, otherwise it is difficult to understand what is the order a copy of which has to be filed in cases under Article 226. We are, therefore, of opinion that in cases covered by Article 226, the Judgment itself is the order to be appealed from, and the time taken in obtaining copy of the judgment has to be excluded. Once the time taken in obtaining the copy of the judgment is excluded, it is admitted that the application for leave to appeal was filed within time.

7. As to the contention that, in any case, the application was barred by time as against Mitha-lal, it is enough to say that we accept the explanation that the name of Mithalal was left out by oversight from the application which was filed on the 30th January, 1952. We, therefore, condone the delay, under the circumstances, u/s 5 of the Limitation Act.

8. The next point that is urged that the application was not presented properly in so far as though it was signed by the Government Advocate, it was presented before the Registrar by his clerk and not by the Government Advocate himself. Under Order 3, Rule 1, C. P. C., any act in any court required or authorised by law to be made or done by a party may, except where otherwise expressly provided, be made or done by the party in person, or by his recognised agent, or by a pleader on his behalf. In this case, the act that was done was the act of presentation of the application for leave to appeal to Supreme Court. This act should have been done by the party in person, or by his recognised agent, or pleader. The Government Advocate naturally represents the State, but his clerk can neither be called the recognised agent of the State, nor a pleader acting for the State.

The presentation, therefore, was not according to law in this case.

9. It appears however that there has been a practice in this Court and in the High Court of the former State of Jodhpur that Government Advocate's clerk presents applications on behalf of the Government Advocate. That this is so also appears from the fact that in this very case, the application for amendment of the original application praying for bringing Mithalal on the record was also presented by Moolraj, clerk of the Government Advocate, and not by the Government Advocate himself. We are of opinion that this practice, unsupported as it is by any rule, must stop in future. At the same time, it would, in our opinion, be unfair to Government that it should suffer because of a wrong practice having grown up. The result of the improper presentation is that the

application would not be deemed to have been presented on the 30th of January when it was actually presented. It may be taken to have been presented on the 3rd March, 1952, when the Government Advocate appeared in support of it at the preliminary hearing. Considering the peculiar circumstances of this case, we extend the time for making the presentation up to the 3rd of March, 1952, (on which date, at any rate, the application must be taken to have been properly presented,) u/s 5 of the Limitation Act.

10. We, therefore, reject the technical objections raised on behalf of the opposite party, and order that a certificate be granted as prayed under Articles 132(1) and 133(1)(c) of the Constitution. In view of the technical defects in the case, we order parties to bear their own costs of the present application.