

(1988) 07 MAD CK 0033
In the Madras High Court

Ramalingam Pillai

APPELLANT

Vs

Arunachalam Pillai and Others

RESPONDENT

Date of Decision : 26-07-1988

Acts Referred:

Citation : (1988) 2 MLJ 139

Hon'ble Judges : V. Ratnam, J

Bench : Division Bench

Judgement

V. Ratnam, J.—In these petitions filed u/s 5 of the Limitation Act, 1963, the petitioner has prayed for the condonation of the delay in preferring Second Appeals to this Court against the common judgment in A.S. Nos. 46 and 47 of 1986, District Court, South Arcot at Cuddalore. In the common affidavit filed in support of these petitions, the petitioner has stated that after the disposal of the appeals by the Court below on 14-8-1987, he had instructed his counsel to apply for copies of judgment and decrees for preferring Second Appeals and as he was under the impression that the necessary copy application would have been filed, he did not contact his counsel till 13-11-1987. The affidavit further proceeds to state that on 13-11-1987, when the petitioner contacted his counsel, he was informed that copies had not been applied for and thereupon, the petitioner is stated to have asked for an application to be made for obtaining the copies and an application was also made on 16-11-1987 and the copies were made ready on 29-1-1988 and delivered on 1-2-1988. The petitioner has further stated that from 22-1-1988 till 8-4-1988, he was suffering from jaundice and fever preventing him from moving about and only after his recovery by the first week of April, 1988, the petitioner contacted counsel, got the copies and made arrangements for the preferring of the Second Appeals on 10-4-1988, when the petitioner was informed that an application to condone the delay should also be filed. Having regard to the circumstances so set out in the affidavit, the petitioner claimed that the delay is neither wilful nor wanton and deserves to be condoned.

2. In the common counter-affidavit filed in opposition to these petitions, the respondents have stated that though the appeals were disposed of by the Court below on 14-8-1987, the copies of judgment and decree were applied for only on 16-11-1987 and that in the absence of any supporting affidavit either from the counsel who appeared in the Court below or his clerk to explain the delay in filing the copy application in spite of instructions contra given by the petitioner, the reason for the delay is unacceptable. The illness form which the petitioner is stated to have suffered was also denied. The petitioner, according to the respondents, had not been diligent at any stage and while he has been able to attend his other duties during the period in question, it is difficult to believe that he has not been able to make arrangements for the filing of the Second Appeals. It was also pointed out that though the copies had been obtained on 29-1-1988, there was no explanation for the non-filing of the Second Appeals before this Court till 19-4-1988. The respondents, therefore, prayed for the dismissal of these petitions.

3. The common judgment and decrees in A.S. Nos. 46 and 47 of 1986, District Court, South Arcot at Cuddalore, were passed on 14-8-1987. Under Article 116(a) of the Limitation Act, 1963, a period of ninety days is prescribed for preferring a further appeal to this Court and the time commences to run from the date of the decree or order. The petitioner made an application for obtaining copies of the common judgment and decrees only on 16-11-1987 and after paying the charges, had obtained the necessary copies on 1-2-1988 and preferred the Second Appeals before this Court on 19-4-1988 enclosing the judgments and decrees so obtained by him. The application for copies of the judgment and decrees had thus been made four days after the expiry of the period of limitation provided for under Article 116(a) of the Limitation Act, 1963, on 12-11-1987. The petitioner, having regard to the making of the application for copies of judgment and decrees after the expiry of the period of limitation, cannot exclude the time taken for obtaining the copies. In *Thirumala v. C.K. Anaverareddi* AIR 1934 Mad 306, a Full Bench of this Court has - held that the time requisite in Section 12 of the - Limitation Act is the time beyond the appellant's control, occupied in obtaining the copy which accompanies the memorandum of appeal and not an ideal lesser period which might have been occupied if the application for copy had been filed at some other date. Therefore, when the copies accompanying the memorandum of Second Appeals are scrutinised, it is seen that the copy application had been filed after the expiry of the period of limitation provided for under Article 116(a) of the Limitation Act, 1963. No doubt, there is no time limit as such for making an application for obtaining copy of the judgment and decree intended to be appealed against, but only if such an application is made within the period of limitation prescribed for preferring the appeal, the time requisite for obtaining the copies shall be excluded in computing the period of limitation provided for under the Limitation Act. If, on the other hand, where such an application is made after the expiry of the period of limitation prescribed for preferring an appeal, then the appellant

proposing to preferring an appeal is not entitled to the benefit of the deduction of the time requisite for obtaining the copies in the matter of computing the period of Limitation, Rightly, therefore, King, J., observed in *Avasarala Kamaraju Pantulu and Another Vs. Balla Saramma*, that Section 12 assumes that the time requisite for obtaining the copy of decree must begin before the prescribed period is over. It will be relevant in this connection to notice the decision of the Supreme Court reported in *A.D. Partha Sarathy Vs. State of Andhra Pradesh*, where the Court observed as follows:

...Now, coming to Sub-section (2) of Section 12 of the Limitation Act, the object of the said subsection is clear and it is to enable a party who seeks to file an appeal against an order to obtain a copy thereof, for without such copy he cannot make an effective representation against the validity of the order. For that reason, in computing the period of limitation, the time taken for obtaining a certified copy of the order is excluded. It excludes time in the course of computation it does not add to the period of limitation any period earned earlier. In computing or calculating the period of limitation from a particular point the sub-section enables the exclusion of a time from that period caused by an event that intervened between the commencement and the termination of the said period. It has no concern with any events interior to the commencement of the period of limitation or posterior to the said period. If time taken for obtaining a copy of the order before the commencement of the period of limitation could be excluded, on the parity of reasoning, time taken for obtaining a copy of the order after the period of limitation also could be excluded. This would lead to an anomalous position; a party can keep quiet till the period of limitation has run out and thereafter apply for a certified copy of the order and claim to exclude the time taken for obtaining the certified copy of the order from the period of limitation. That could not have been the intention of the Legislature.

On the principles laid down in the decisions referred to above, it is clear that the petitioner, who had admittedly made an application for copies of the judgment and decrees after the expiry of the period of limitation, cannot claim to exclude the time taken for obtaining the copies while computing the period of ninety days under Article 116(a) of the Limitation Act, 1963.

4. Earlier, it has been noticed that the prescribed period of limitation for preferring - the Second Appeals had expired on 12-11-1987 and that the Second Appeals were preferred only on 19-4-1988. In as much as the petitioner is not entitled to exclude the time spent in obtaining the copies, it has to be taken the delay in this case is from 13-11-1987 till 19-4-1988. In other words, the delay is 159 days and not 84 days as stated by the petitioner.

5. The petitioner in his affidavit has attempted to explain the delay by throwing the blame on his counsel. The claim of the petitioner that though he had instructed his counsel to apply for copies immediately after the disposal of the appeals by the court below and that counsel did not do so, is difficult to accept. If the counsel had either by oversight or an inadvertent omission failed to file a

copy application despite instructions of the petitioner, nothing prevented the counsel or even his clerk from saying so in the form of a supporting affidavit. The inaction attributed to the counsel is, therefore, unacceptable. It is also difficult to believe that the petitioner did not bother to contact the counsel till 13-11-1987, if he had already instructed counsel to file an application for copies. That the petitioner entertained an impression that the copy application would have been filed is unbelievable. It is obvious that these excuses have been deliberately given by the petitioner in order to cover up his laches in not having made the necessary arrangements for filing a copy application prior to the expiry of the period of limitation prescribed under Article 116(a) of the Limitation Act, 1963. The question whether the petitioner had sufficient cause for not preferring the Second Appeals within the time prescribed under Article 116(a) has to be considered on the basis whether the petitioner had shown cause why he did not file the Second Appeals on 12-1-1987. In *Ramlal, Motilal and Chhotelal v. Rewa Coalfields Ltd.* (1961) 2 M.L.J. 131 : (1961)2 S.C.J. 556 the expression "within such period" was interpreted to mean the period ending with the last day of limitation prescribed. Looked at from that point of view, it is obvious that the inability of the petitioner to file appeals before this Court on 12-11-1987 was not on account of reasons beyond his control, but owing to his not having made the necessary arrangements for obtaining the required copies even on the last day. The circumstance that the petitioner applied for copies after the expiry of the period of limitation and obtained the same on 1-2-1988 and preferred the Second Appeals on 19-4-88 would not make any difference in the interpretation of the expression "within the period". Occurring in Section 5 of the Limitation Act, 1963. Though the petitioner claimed that from 22-1-1988 till about 8-4-1988 he had been suffering from jaundice and fever and was advised to take rest, it is difficult to accept that the petitioner was unable to even to transmit the relevant records to the counsel for the purpose of preferring the Second Appeals minimising the delay. In any event, there is absolutely no explanation even attempted regarding the delay between 5-4-1988 till 19-4-1988. Thus even considering the question of sufficient cause, the petitioner appears to have had none, for, as noticed earlier, he was unable to prefer the Second Appeals, on the ninetieth day for the simple reason that he had not made arrangements for obtaining the required copies even on that date. There is no believable explanation offered by the petitioner for the omission to apply for the copies of the judgment and decrees prior to the expiry of the period of limitation and the petitioner has also not attempted within the prescribed period. Section 5 of the Limitation Act contemplates cases where a party having obtained all the required copies well before the expiry of the period of limitation prescribed for preferring an appeal has been unable to do so even on the last day owing to circumstances beyond his control and thus viewed, the petitioner cannot be permitted to approach this Court and ask for the condonation of the delay of 159 days. Consequently, these petitions are dismissed. S.A.SR. Nos. 30993 and 30990 of 1988 will stand rejected. u/s 66(2) of the Tamil Nadu Court-fees and Suits Valuation Act, the appellant will be entitled to a refund of half the Court-fee paid

on the memoranda of Second Appeals.