
(1970) 07 MP CK 0010
In the Madhya Pradesh High Court
Case No : M.P. No. 216 of 1967

Ramjilal and another

APPELLANT

Vs

Board of Revenue, M.P. and another

RESPONDENT

Date of Decision : 21-07-1970

Acts Referred:

Constitution of India, 1950 — Article 226

Madhya Pradesh Co-operative Societies Act, 1960 — Section 77(3)

Citation : (1970) JLJ 922 : (1971) MPLJ 194

Hon'ble Judges : K.L. Pandey, J;A.P. Sen, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

A. P. Sen, J.

The Petitioner's filed this application under Article 226 of the Constitution for quashing an order of the Board of Revenue dated 6th August 1966, dismissing their appeal u/s 77(3) of the Madhya Pradesh Co-operative Societies Act, 1960, as barred by limitation.

Under Section 77(3), the appeal had to be preferred within 30 days of the date on which the order appealed against was communicated to them. The procedure to be followed for presentation of appeals is prescribed in Rule 59 of the Rules framed under the Act. Sub-rule (3) thereof directs that every appeal shall state the date of the order appealed against. The appellate authority is required under Sub-rule (5) to satisfy itself that the appeal is made within the prescribed time limit. If it finds that the appeal does not conform to the requirements of Sub-rule (3), it shall call upon the Appellant to remedy the defect. Under Sub-rule (8), if the Appellant fails to remedy the defect, the appellate authority may, if the appeal is not presented within the time limit, dismiss the appeal as time-barred. In cases where it is considered necessary to give a hearing it shall fix a date for hearing, of which due notice shall be given to the Appellant.

After the appeal was presented to the Board its registry kept the column relating to limitation blank, as the appeal did not mention the date of communication of the order appealed against. The learned Member thereupon also could not treat the appeal as time-barred, as the records of the case had not been received. The records were then summoned and they showed that the order of the Joint Registrar was delivered on 8th March 1965, with a direction that it be communicated to the parties. The order was actually issued by Joint Registrar's communication dated 28th April 1965. The communication was addressed to the Petitioner No. 2 Ramnarain. The Petitioners filed the appeal before the Board of Revenue on 10th June 1965. At the hearing, the Respondent No. 4 the Society, raised an objection that the appeal was barred by limitation. The Petitioners filed an affidavit sworn by the Petitioner No. 1 Ramjilal stating that the order of the Joint Registrar was received by the Petitioner No. 2 Ramnarain on 15th May 1965 and, therefore, the appeal filed by them was within time. In reply to this, the Respondent Society filed a counter-affidavit of its manager stating that he had been informed by the Petitioner No. 2 on 4th May 1965 that he had received the order of the Joint Registrar before 3rd May 1965 and accordingly the appeal filed by the Petitioners on 10th June 1965 was beyond time. The Board of Revenue, having regard to the communication of the Joint Registrar dated 28th April 1965 observed that it would normally be presumed that it must have reached the Petitioner No. 2 within a reasonable time. It further noticed that the Petitioner No. 1 to whom the communication was not addressed had chosen to file an affidavit stating the actual date of receipt and observed that no reliance could be placed on the affidavit of the Petitioner No. 1 as he had no knowledge of the actual date. In the circumstances, the Board of Revenue inferred that the Petitioners received the order of Joint Registrar prior to 10th May 1965.

Only three questions are urged in the petition. The first is that the Board of Revenue could not have dismissed the appeal as time-barred without holding an enquiry into the date of receipt of communication. It is urged that the matter could not be decided on affidavits. Secondly, the Board of Revenue erred in treating the appeal time-barred so far as the Petitioner No. 1 was concerned to whom the order of the Joint Registrar had admittedly not been communicated. And thirdly, it is contended that under Rule 59 (6), the Petitioner should have been afforded an opportunity to remedy the defect and as no notice had been served, the procedure adopted by the Board of Revenue was irregular.

Having heard the parties, we have formed the opinion that the petition must fail. So far as the first point is concerned, the contention that the Board of Revenue could not decide the question on affidavits, cannot be accepted. Rule 59 (8) only directs that a hearing has to be given. The rule reads as follows:

.....the appellate authority may, if the appeal is not presented within the time limit, dismiss the appeal as time-barred. In cases where it is considered necessary to give a hearing, the appellate authority may fix a date for hearing, of which due notice shall be given to the Appellant

The requirements of Rule 59 (8) have been strictly complied with. Ordinarily, such interlocutory matters are decided upon affidavits. The Petitioners never sought an opportunity to cross-examine the manager of the Respondent Society on his counter-affidavit Nor did they ask for an opportunity to lead evidence to prove that the order appealed against had actually been communicated to the Petitioner No. 2 Ramnarain on 15th May 1965 as alleged by them. The parties joined issue on the date of communication and rested their case on affidavits. The Board of Revenue fixed a date for hearing on which notice was given to both the parties and they were heard. That being so, the order of the Board of Revenue cannot be assailed on the ground that it was not in conformity with Rule 59 (8).

In *Kanhaiyalal S. Dadlani v. Seth Meghraj* 1954 N L J 401 : A I R 1954 Nag. 260 : I L R 1954 Nag. 603 *Sinha C. J. and Hidayat-ullah J.* expressed their agreement with the observations of *Ghulam Hassan J.* (as he then was) in *Shib Sahai v. Tika* AIR 1942 Luck. 350 : (1942) I L R 18 Luck. 104 laying down that affidavits may be received in evidence for interlocutory matters. Such affidavit evidence can be received by consent of parties or by order of the Court. The order of the Court always be implied from the fact that affidavits were received in evidence. The other side may, however, apply to the Court for an order of attendance of the deponent for cross-examination. When challenge is made to the facts stated in an affidavit by a counter-affidavit, the Court may, of course, order oral evidence to be taken. The Board of Revenue decided to proceed upon the affidavits with the consent of both the parties.

Secondly, the contention that the Board of Revenue could not have dismissed the appeal as time-barred so far as the Petitioner No. 1 is concerned, cannot be accepted. Both the Petitioners, Ramjilal and Ramnarain, were jointly dealing with the Respondent-Society and they were trading in the name and style "Ramjilal Ram Narayan". That being so, communication of the order to one was communication to the other. The word "communicated" must, in the context of Section 77(3), means "brought to the knowledge of". The Board of Revenue has found, as a fact, that the order of the Joint Registrar was communicated to the Petitioner No. 2 Ramnarain before 10th May 1965. Limitation for the appeal, therefore, began against the Petitioners from that day. The finding of the Board of Revenue as to the date of communication is grounded on belief or disbelief of the respective affidavits filed by the parties. On a consideration of the affidavits, along with the facts emerging from the record, the Board of Revenue has come to a finding that both the Petitioners had knowledge of the order appealed against on 10th May 1965. That being so, the Board of Revenue was right in dismissing the appeal preferred by the Petitioners.

Lastly, the contention that the Petitioners were not afforded an opportunity to remedy the defect as no notice under Rule 59 (6) had been served, cannot be accepted. The requirements of Rule 59 (6) are directory. Each case depends on its particular facts. When an appeal is prima facie barred by limitation, the

persons appealing are expected to know the defect. Though there is no formal notice under Rule 59 (6), there is intrinsic evidence on record to show that the Petitioners had notice of the defect though it omitted to mention the date of communication. The Registrar, therefore, failed to make an endorsement if the appeal was filed in time. While admitting the appeal for hearing, the Board of Revenue kept the question of limitation open. It observed that unless the records were received, it was not possible to ascertain whether the appeal was in time. The attention of the Petitioners were drawn to the defect and at the hearing, an objection was raised that the appeal was barred by limitation. The Petitioners knew that the appeal was defective, and they filed an affidavit stating the date of communication to be 15th May 1965. The requirements of Rule 59 (6) have thus been substantially complied with.

The result, therefore, is that the petition fails and is dismissed with costs. Counsel's fee Rs. 100, if certified.