

**(1960) 09 PAT CK 0007**

**In the Patna High Court**

**Case No : Second Appeal No. 685 of 1959**

Rampravesh Singh and Others

APPELLANT

Vs

Maresh Singh and Others

RESPONDENT

**Date of Decision : 12-09-1960**

**Acts Referred:**

Civil Procedure Code, 1908 (CPC) — Order 41 Rule 1(1)  
Limitation Act, 1908 — Section 5

**Citation : AIR 1961 Patna 129**

**Hon'ble Judges : Raj Kishore Prasad, J**

**Bench : Single Bench**

**Advocate : Shreedeva Narayan, for the Appellant; Lal Narayan Sinha, Government Advocate, for the Respondent**

## **Judgement**

Raj Kishore Prasad, J.—This is an application, u/s 5 of the Limitation Act, on behalf of the appellants, for condoning the delay in filing a copy of the judgment appealed from, after the appeal had become barred by time, and, to admit the appeal, which was invalidly presented within time, but was made competent after limitation had run out.

2. The appeal was filed on the 30th of June, 1959, accompanied by only a copy of the decree, but without a copy of the judgment appealed from, which was, however, subsequently filed on the 29th September, 1959, after the period of limitation for filing the appeal had already expired on the 12th of July, 1959.

3. The first question, therefore, is whether, in the circumstances, the appeal can be considered to be a valid appeal?

4. For an answer to this question, we have to read Clause 1. of Rule 1 of Order XLI of the Code of Civil Procedure, which is in these terms:

"1. (1) Every appeal shall be preferred in the form of a memorandum signed by the appellant or his pleader and presented to the Court, or to such officer as it appoints in this behalf. The memorandum shall be accompanied by a copy of the

decree appealed from and (unless the Appellate Court dispenses therewith) of the judgment on which it is founded."

5. It is plain from Order XLI Rule 1, Clause (1) of the Code, reproduced above, that the memorandum of appeal must be accompanied, not only by a copy of the decree appealed from, but also by a copy of the judgment on which it is founded, unless the Appellate Court dispenses with it. Order XLI, Rule 1(1) makes it an inflexible rule that, in the case of an appeal from a decree, the memorandum of appeal must be accompanied by a copy of the decree. The Court cannot dispense with it, for the rule is imperative,

But, though the Court cannot dispense with a copy of the decree, it may dispense with a copy of the judgment appealed from. There is, therefore, no valid appeal unless the memorandum of appeal is accompanied both by a copy of the decree and a copy of the judgment appealed from, unless the latter is dispensed with. If the copy of the judgment is filed later, after the expiration of the period of limitation prescribed for the appeal, the appeal is time-barred; this is because there is no valid appeal until a copy of the judgment, if not dispensed with, is also filed.

6. In the instant case, admittedly, the filing of the copy of the judgment appealed from was not dispensed with by the court, as required by Clause (1) of Rule 1 of Order XLI. It is manifest, therefore, that the appeal was imperfectly constituted, and not validly presented on the 30th of June, 1959, as it was not accompanied by a copy of the judgment of the Court of appeal below, and, that it was made competent on the 29th September, 1959, when a copy of the said judgment was filed; but after the expiry of the period of limitation on the 12th of July, 1959. *Prima facie*, therefore, the appeal is barred by limitation. I would, accordingly, answer the first question posed by me in the negative.

7. The second question, then, which is the crucial question, here, for consideration, is, Has the delay been accounted for to the satisfaction of the Court? In other words, Should the Court exercise the power conferred upon it by Section 5 of the Limitation Act, by which an appeal may be admitted after the date "when the appellant satisfies the Court that he had sufficient cause" for not filing, in the instant case, a copy of the judgment appealed from in due time?

8. In the application, u/s 5 of the Limitation Act, it is said that the copy of the judgment of the lower Appellate Court was obtained before the filing of the appeal, but, by mistake, it was left at home, and, therefore, it was not brought at Patna, when filing the appeal in this Court. In the said application, there is no explanation as to why, when the copy of the judgment in question had already been obtained on the 27th of April, 1959, as appears also from the copy of the judgment itself, it was not filed immediately after the filing of the appeal on the 30th of June, 1959, when the mistake was discovered, before the 12th of July, 1959, which was the last date for filing the appeal.

9. A supplementary affidavit, however, has subsequently been filed by the

appellants on the 14th of July, 1960, in which the reason given for not filing the judgment earlier is that the deponent, Rameshwari Singh, one of the appellants, came to Patna in the second week of July, 1959, and he handed over the copy of the judgment to Ramanugrah Narayan, the clerk of Mr. Harians Kumar, the appellants' advocate, as the learned advocate was not here at that time.

Later on, it is said, the appellants received a letter in the month of September, 1959, from their advocate asking them to file a certified copy of the judgment in question, and, thereafter, the deponent, Rameshwari Singh, came, and informed Mr. Harians Kumar that he had already handed over the judgment to Ramanugrah Narayan his clerk and, then he was informed by his advocate that the said Ramanugrah Narayan was not working under him since July, 1959. Mr. Harians Kumar has not personally sworn an affidavit to the truth of the statements made in the supplementary affidavit. Simply because Mr. Harians Kumar has filed under his own signature the said supplementary affidavit, it cannot be assumed, as asked for, that the facts stated therein are true to his knowledge, and, that he vouchsafes the correctness of those statements.

But, assuming that the facts stated therein are correct, even then, there is no explanation as to why the appellants took so much time to come to Patna to hand over the copy of the lower Appellate Court's judgment, which had, admittedly, already been obtained on the 27th of April, 1959, and, was left at their house. The deponent could have come immediately after the filing of the appeal on 30th of June, 1959, as the case came from Shahabadi, and, filed the copy of the judgment in question by, or over on, the 12th of July, 1959, when the period of limitation for the appeal was to expire. In my opinion, the explanation given is not at all convincing, and true, and therefore, it must be rejected.

10. The learned Government Advocate, appearing for the respondents, relied on a decision of the Privy Council, in *Ram Narain Joshi v. Parmeshwar Marain* ILR 30 Cal 309 : 30 IndApp 20 (PC), in support of his contention, that, when the mistake was brought to the appellants' notice, they made abnormal delay in filing the judgment of the lower Appellate Court, although it was with them, and, therefore in such a case, the delay should not be condoned.

11. In the Privy Council case also, when the mistake was brought to the appellants' notice, great delay occurred in the taking of any steps by them to rectify it. The High Court refused to admit the appeal out of time, and the Privy Council also refused to interfere with the order of the High Court.

12. The present case is on all fours with the facts of the above case. Here also, the appellants came to know on the 30th of June, 1959, when they filed the appeal in this Court, that they were required to file a copy of the judgment of the lower Appellate Court also. That copy of the judgment had not to be obtained, but had already been obtained earlier, on the 27th of April, 1959, and was with them at their house. In spite of knowing this mistake on the 30th of June, 1959,

a long interval of time elapsed between the 30th of June, 1959, and the filing of the copy of judgment on the 29th of September, 1959. Between the filing of the appeal, on the 30th of June 1959, and, the last date of limitation, which was the 12th of July, 1959, there was sufficient time for the appellants to bring the copy of judgment from home, and, file it in time. That was not done. On these facts, therefore, I am not at all satisfied that the appellants made bona fide mistake, or that sufficient cause for the delay had been made out.

13. It was pressed by Mr. Shreedeva Narayan, appearing for the appellants, that the case is one of apparent hardship, as the appellants have lost in both the Courts below, and, that, though the whole difficulty has arisen from the mistake of Rameshwari Singh, one of the appellants, or, their advocate's clerk, those mistakes were venial, and, therefore, the appellants ought to be relieved from the serious consequences which they have entailed. In my opinion, sympathy cannot be allowed to sway the decision of the Court.

14. AS observed by Sir Lawrence Jenkins, in *Krishnasami Panikondar v. Ramsami Chettiar* AIR 1917 PC 179 : 45 Ind App 25:

"It is the duty of a litigant to know the last day on which he can present his appeal, and if through delay on his part it becomes necessary for him to ask the Court to exercise in his favour the power contained in Section 5 of the Indian Limitation Act, the burden rests on him of adducing distinct proof of the sufficient cause on which he relies".

15. Here, on the affidavits themselves of the appellants, there is no doubt that they alone were responsible for the delay, and, that, at least, it has not been accounted for, and no sufficient cause has been made out.

16. Mr. Narain, then, placed strong reliance on a Bench decision of the Nagpur Judicial Commissioner's Court, in AIR 1926 57 (Nagpur) , in support of his contention that the fact, that the appellants were granted time to file the copy of judgment in question by the Deputy Registrar and that they filed it before the matter came before the Bench, goes to show that the filing of the copy of the judgment, along with the memorandum of appeal, was impliedly dispensed with, and, that it was permitted to be filed beyond time. This contention, however, must be rejected as without substance, for two reasons;

The first is, that the Nagpur case has no application here. In the Nagpur case, the memorandum of appeal itself stated that the copy of the judgment would be given afterwards, and, the appeal was admitted on presentation, and, notice was ordered to issue to the respondents. In those circumstances, it was held that it must be taken that the Court dispensed with the copy of the judgment. Here, that is not the position. The appeal was filed on the 30th of June, 1959, without a stamp report, when the Registrar ordered it to be simply registered, and to be put up for orders.

On the 23rd July, 1959, after the limitation had already expired on the 12th July,

1959, the Stamp Reporter of the High Court pointed out several defects, including the defect that the judgments of both the Courts were wanting. In spite of this defect being pointed out, which was already known to the appellants, when they filed the appeal on the 30th June, 1959, as admitted by them in paragraph 3 of their application u/s 5 of the Limitation Act, they did not file the judgment appealed from for more than two months. The matter, then, came up on the Lawazima Board before the Deputy Registrar, who, on the 2nd September, 1959, allowed 14 days' final time to file copies of both the judgments. Again the judgment in question was not filed. Then, on the 10th September, 1959, further 14 days' time was allowed by the Deputy Registrar to comply with the above order.

On the 28th September, 1959, when the aforesaid two orders of the Deputy Registrar were not complied with, the Registrar, on the 28th September, 1959, ordered the matter to be laid before the Bench. The next day, that is, on the 29th September, 1959 before the matter came up before the Bench on the 1st October, 1959, the judgment in question was filed. The Stamp Reporter, then, submitted a further report on the 20th January, 1960, that the appeal was time barred. The present application u/s 5 of the Limitation Act was, then, filed on the 20th April, 1960.

17. From the foregoing facts, it is reasonably clear that here it was not mentioned in the memorandum of appeal that a copy of the judgment appealed from will be filed later, nor the appeal has as yet been admitted, nor notices of the appeal have yet been directed to be issued, as was the case in the Nagpur case, and, as such, the Nagpur decision cannot be called to their aid by the appellants. On the basis of the Nagpur decision, on the facts here, it cannot be, therefore, held that the copy of the judgment appealed from must be deemed to have been impliedly dispensed with in the present case.

18. The second reason is, as held by me in Moinuddin and Others Vs. Ajodhya Sahu and Others, that the Deputy Registrar, or as a matter of fact even the Registrar, cannot extend the period of limitation or grant time for filing the copy of the judgment appealed from beyond the period of limitation.

19. On the question of the powers of the Deputy Registrar, the relevant rules of this Court are Rule 14 Chapter II, Part I, Page II, and Rule 7, Chapter VII, Part II, pages 35-36, of Rules of the High Court at Patna, 1916, 1958 Edition. The just-mentioned Rule 14 of Chapter II and Rule 7 of Chapter VII, are to the following effect:

## CHAPTER II

"14. The Registrar may delegate any of his functions under these rules except those which are of a judicial or quasi-judicial character to the Deputy Registrar or other Officer of the Court".

## CHAPTER VII

"7. When an appeal or application is not accompanied by the necessary copies of judgments the Registrar may allow time for production of the same. If copies are not produced within the time allowed, the appeal or application shall be laid before the Court for orders."

20. Rule 13, of Chapter II, specifies the several duties and powers of the Registrar, in addition to the powers conferred upon him by other Rules. Rule 14, of the same Chapter, empowers the Registrar to delegate any of his functions under these rules, except which are of a judicial or quasi-judicial character, to the Deputy Registrar or other Officer of the Court. Rule 7 of Chapter VII, gives power to the Registrar to allow time for production of the necessary copies of judgments if they have not been filed along with the memorandum of appeal or application for revision, of the nature indicated in the earlier Rule 6 of this very Chapter VII. The Deputy Registrar, by virtue of this delegated power of the Registrar, has the power to allow time for production also of copy of the judgment appealed from.

The Deputy Registrar, in the present case, acting under his delegated power, under Rule 7 of Chapter VII, granted time to the appellants on two occasions for filing the judgment in question. The latter part of Rule 7 of Chapter VII, itself provides that if the copies of the judgments are not produced within the time allowed, the appeal or application, as the case may be, shall be laid before the Court for orders, In pursuance of this rule, the Registrar, in the present case, on the 28th September 1959, ordered the matter to be laid before the Bench when the previous two orders of the Deputy Registrar were not complied with.

21. But, because the Deputy Registrar granted time for production of the judgment in question on two occasions, although on both the occasions, after limitation had run out, it cannot be said that the limitation had been condoned, or, that the filing of the judgment in question beyond the period of limitation had been impliedly allowed, for the simple reason that the Deputy Registrar, or as a matter of fact, even the Registrar had no power to do either. Even the Bench by merely extending the time granted by the Registrar or the Deputy Registrar under Rule 7, Chapter VII, beyond the period of limitation, for filing of a copy of the judgment appealed from, cannot extend the period of limitation fixed by the Statute. It is only when an application u/s 5 of the Limitation Act is made that the question of condoning the delay in filing the judgment appealed from can be considered by the Bench. Rule 7 of Chapter VII cannot override the provisions of the Limitation Act. In this view of the matter also, the contention of the appellants cannot be accepted as valid.

22. The facts of this case disclose gross negligence and inexcusable carelessness and want of bona fides on the part of the appellants. It is really surprising that although the judgment in question, the copy of which was obtained on the 27th April, 1939, was with the appellants, it was not brought from home, when one of the appellants came here to file the appeal, nor was it filed for such a long time. I, therefore, agree with the learned Government Advocate that to condone the

delay in the instant case, and, to admit the appeal beyond time, in such circumstances, would amount to putting premium on the gross negligence and unpardonable carelessness of the appellants.

23. In deciding this case, I have kept in the forefront the weighty observation of Venkatarama Ayyar, J. of the Supreme Court, who pronounced the unanimous opinion of the Court, in *Dinabandhu Sahu v. Jadumoni Mangaraj* AIR 1954 SC 411 at page 414, that:

"As was observed in the Full Bench decision *Krishna v. Chathappan* ILR 13 Mad 269, in a passage which has become classic, the words "sufficient cause" should receive "a liberal construction as to advance substantial justice when no negligence nor inaction nor want of "bona fides" is imputable to the appellant".

In the instant case, however, all the just-mentioned three defects, namely, "negligence", "inaction", and, "want of bona fides", are prominently present. The facts of the case are so coercive that it is impossible to hold that the appellants have made out a case for condoning the delay.

24. After a careful and critical examination and appreciation of the affidavits and facts of the case, I have no hesitation in distrusting the appellants' explanation and holding that sufficient cause had not been shown and the delay has not been accounted for. I would, therefore, answer also the second question, posed by me, in the negative.

25. In the result, the application fails and is dismissed with costs. Hearing fee Rs. 32/-.

26. The appeal, being out of time, is not competent, and, therefore, it cannot be admitted. The memorandum of appeal, for the reasons given above, is accordingly rejected.