
(1993) 09 MAD CK 0099
In the Madras High Court

S. Pakkiaraj

APPELLANT

Vs

S.N. Kulasekaran

RESPONDENT

Date of Decision : 14-09-1993

Acts Referred:

Citation : (1994) 1 LW 418 : (1994) 1 MLJ 91

Hon'ble Judges : Abdul Hadi, J

Bench : Division Bench

Judgement

Abdul Hadi, J.—C.M.P. No. 8475 of 1993 is for excusing the delay of 134 days in filing the first appeal against the judgment and decree dated 16.10.1992 in O.S. No. 250 of 1988 on the file of Sub Court, Vellore.

2. Though it is not specifically stated in the affidavit in support of the petition, the learned Counsel for the petitioners admits that the copy application for the abovesaid judgment and decree dated 16.10.1992 was made only after 90 days from the abovesaid date 16.10.1992. Yet, according to the said counsel, the civil miscellaneous petition cannot be dismissed on the footing of the decision given by the Division Bench of this Court in The Land Acquisition Officer v. V. Kannan Pillai (1992) 2 L.W. 28. I was also a party to the said Division Bench judgment and the said judgment only concurred with the earlier judgment of Ratnam, J. in Ramalingam Pillai Vs. Arunachalam Pillai and Others, .

3. The submission of the said learned Counsel is that even when the copy application is made after the abovesaid 90 days that is, after the expiry of the period of limitation provided for under the relevant Article of the Limitation Act, the delay in filing the copy application as started above, could also be excused u/s 5 of the Limitation Act, if sufficient cause is shown and that neither the decision of Ratnam, J. nor the abovesaid Division Bench judgment would be a bar for the court to consider in a given case whether there is justification for excusing the said delay in filing the copy application itself u/s 5 of the Limitation Act.

4. In this connection, the learned Counsel also drew my attention to a recent

order of Srinivasan, J. in C.M.P. Nos. 683 and 684 of 1993 dated 3.9.1993. In that case, the impugned order, sought to be revised in revision was dated 19.11.1991 and the copy application for the said order was made only on 30.10.1992 which was well beyond the period of 90 days from 19.11.1991. In that context Srinivasan, J., after referring to the abovesaid Division Bench judgment and the judgment of Ratnam, J. and also the decision in A.D. Partha Sarathy Vs. State of Andhra Pradesh, , (which was referred to both in the said Division Bench judgment and the judgment of Ratnam, J.), held as follows:

The Bench has not held that no application u/s 5 of the Limitation Act is maintainable, if applications for certified copies of the judgment and decree are made beyond the period of 90 days. On the other hand, the Bench has only held that the period taken by the court for issuing certified copies of judgment and decree should not be excluded under the provisions of Section 12 of the Limitation Act when the delay in filing the appeal or revision is calculated by the appellant or petitioner.... On the other hand, the Division Bench has not held that Section 5 cannot be invoked by a party who has applied for certified copies of judgment and decree after the expiry of a period of 90 days. The party has to explain that period also as part of the delay.

Thus, according to Srinivasan, J. also with the party who files copy application after the expiry of the abovesaid period of 90 days could explain u/s 5 of the Limitation Act that delay also, in filing the copy application itself apart from explaining any subsequent delay before filing the appeal or revision as the Case may be. In that way only Srinivasan, J. has chosen to interpret the abovesaid judgment of the Division Bench and the said interpretation is now canvassed before me for approval by the learned Counsel for the petitioners.

5. With due respect to my learned brother Srinivasan, J. I am unable to concur with his interpretation of the Division Bench judgment, particularly in the light of the Supreme Court decisions relied on by the said Bench and also by Ratnam, J.

6. To a great extent, the whole thing revolves round the meaning to be given to the term "within such period" appearing in Section 5 of the Limitation Act, which runs as follows:

5. Extension of prescribed period in certain cases: Any appeal or any application, other than an application under any of the provisions of Order 21 of the Code of Civil Procedure, 1908, may be admitted after the prescribed period if the appellant or the applicant satisfies the court that he had sufficient cause for not preferring the appeal or making the application within such period.

No doubt, the term "prescribed period" in the abovesaid Section 5 means the period of limitation prescribed in each case. The present case being no where time has to be computed for preferring an appeal to this Court, Article 116(a) prescribes the said period of limitation as 90 days from "the date of decree or order" and, if the case is one for revision, the said period as prescribed in Article 131 of the Limitation Act is once again 90 days from "the date of the decree or

order or sentence sought to be revised". According to the learned Counsel for the petitioners it is clear even from reading Section 5 that the delay from the very date of decree or order, appealed against or sought to be revised could be excused u/s 5 if sufficient cause is shown for not preferring the appeal or revision "within" the abovesaid period of limitation. In other words, the said counsel wants to read the expression "within such period" found in Section 5 as meaning "during the prescribed period", that is, during the abovesaid period of limitation.

6A. But the Supreme Court decision in *Ramlal, Motilal and Chhotelal Vs. Rewa Coalfields Ltd.*, which has been relied on in the abovesaid Division Bench judgment as well as the above referred to judgment of Ratnam, J. does not interpret the said expression "within such period" as stated by the abovesaid counsel. It has only observed thus:

The context seems to suggest that "within such period" means within the period which ends with the last day of limitation prescribed. In other words, in all cases falling u/s 5 what the party has to show is why he did not file an appeal on the last day of limitation prescribed. That may inevitably mean that the party will have to show sufficient cause not only for not filing the appeal on the rest day but to explain the delay made thereafter day by day. In other words, in showing sufficient cause for condoning the delay the party may be called upon to explain for the whole of the delay covered by the period between the last day prescribed for filing the appeal and the day on which the appeal is filed. To hold that the expression "within such period" means during such period would, in our opinion be repugnant in the context.

6B. That is why the following passage in the judgment of Ratnam, J. referred to supra, was extracted by the abovesaid Division Bench, with approval in its judgment:

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.

[emphasis supplied]

It is significant that the last part of the abovesaid passage definitely says, "the petitioner cannot be permitted to approach this Court and ask for the condonation of the delay of 159 days".

[emphasis supplied]

The abovesaid 159 days delay was, as a result of the copy application itself having been filed after the expiry of the prescribed period of limitation. In *Ramalingam Pillai Vs. Arunachalam Pillai and Others*, , the judgment appealed against was dated 14.8.1987 and the copy application was made only on

16.11.1987 that is only after the abovesaid 90 days period expired on 13.11.1987. The copy was made ready on 29.1.1988 and the second appeal was filed on 19.4.1988. In that context only, Ratnam, J. observed thus:

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.

6C. It is with reference to this delay of 159 days (that is, the period between 14.8.1987 and 19.4.1988, amounting to 249 days abovesaid 90 days) Ratnam, J. observed that the petitioner cannot be permitted to approach this Court for condonation of the said delay and the abovesaid Division Bench concurred with the said view. It is clear from the expression used, viz. "cannot be permitted", that it is not possible at all to condone the said delay u/s 5 of the Act since part of the said delay is due to the fact that copy application itself was filed after the abovesaid 90 days. No doubt there is no time limit as such for making an application for obtaining copy of the judgment and decree appealed against. But, if such an application is made after the prescribed period of limitation of 90 days, the whole period beginning from the date of the judgment and decree till the date of filing of the copy application would be certainly taken as forming part of the whole delay in filing the appeal or revision, as the case may be. But, that portion of the said delay upto the abovesaid 90th day from the date of the judgment and decree, cannot be excused at all u/s 5 of the Limitation Act. This conclusion is only the necessary consequence of interpretation put by the Supreme Court in relation to the expression within such period" found in Section 5 of the Limitation Act in *Ramlal, Motilal and Chhotelal Vs. Rewa Coalfields Ltd.*, .

7. No doubt the learned Counsel for the petitioners drew my attention to the following passage in *Bechi v. Ashan Ullah Khan* I.L.R 12 All. 461:

There may of course be cases in which delay in applying for a copy...is due to wholly unavoidable causes beyond the control of the litigant, but this delay being antecedent to the application...cannot be called "time requisite for obtaining a copy" within the meaning of Section 12,...and if there has been delay under excusable or unavoidable circumstances, that would be a matter for consideration u/s 5....

So according to the learned Counsel the delay antecedent to the application for copy of the judgment and decree may be considered for being excused u/s 5. But, this Allahabad decision has not considered the meaning of the term "within such time" found in Section 5, as expounded by the Supreme Court in *Ramlal, Motilal and Chhotelal Vs. Rewa Coalfields Ltd.*, .

8. No doubt, there may be hardship in some cases in view of the abovesaid interpretation given by the Supreme Court in *Ramlal, Motilal and Chhotelal Vs. Rewa Coalfields Ltd.*, , which the abovesaid Division Bench and Ratnam, J. followed. But, it is for the Legislature to set it right, if in its wisdom, it thinks the

said hardship is a genuine one deserving to be relieved.

9. Hence, in view of the Division Bench judgment referred to supra, this civil miscellaneous petition is dismissed. No costs.

10. C.M.P. Nos. 9815 of 1993 and 14089 of 1991 have also to be dismissed on the same reasoning stated above. C.M.P. No. 9815 of 1993 is for excusing the delay of 109 days in filing the civil revision petition. Here again, though the supporting affidavit does not say when actually copy application was made, the learned Counsel for the petitioner fairly represented that the copy application was made beyond 90 days time prescribed under Article 131 of the Limitation Act. Likewise, C.M.P. No. 14089 of 1991 is for excusing the delay of 77 days in preferring the review petition. The prescribed period of limitation in the case of review petition is 30 days as per Article 124 of the Limitation Act. Here again, as per the representation of the learned Counsel for the petitioner, the copy application was made after the abovesaid 30 days time. Therefore, both these civil miscellaneous petitions are also dismissed. No costs.