
(1958) 08 MAD CK 0015

In the Madras High Court

Case No : S.C. Miscellaneous Petition No. 102 of 1958 (Criminal)

Sachindranath Chatterjee

APPELLANT

Vs

State of Madras

RESPONDENT

Date of Decision : 07-08-1958

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 45 Rule 7(1)
Supreme Court Rules, 1950 — Order 12 Rule 3, Order 21 Rule 17

Citation : AIR 1959 Mad 73 : (1959) CriLJ 209 : (1958) 2 MLJ 534

Hon'ble Judges : Ramaswami, J

Bench : Single Bench

Advocate : S. Mohan Kumaramangalam, for A.S. Siva Kaminathan, for the Appellant; V. Ramaswami, for Govt. Pleader, for the Respondent

Final Decision : Allowed

Judgement

Ramaswami, J.—This is an application for excusing delay in depositing the initial charges for printing records in S.C.S.L.P. CrI. Nos. 557 to

500 of 1957 against CrI. R. C. No. 59 of 1937 and in which leave has been granted by the Supremo Court.

2. Under Rule 17 of Order XXI of the Supreme Court Rules it is provided that the preceding orders of the Rules of the Supreme Court with

reference to civil appeals with the necessary, modifications and adaptations are to apply to criminal appeals also. Order XII Rule 3 of the Supreme

Court Rules provides that when an appellant having obtained a certificate fails to furnish the security or make the deposit as required under Order

XLV Rule 7 (1) of the CPC the High Court may cancel the certificate or make such further or other order as the justice of the case may require.

The time contemplated under Order XLV Rule 7 (1) C. P. C. within which the deposit is required to be made under Rule 7 (1) (b) is 90 days or

such further period not exceeding sixty days as the court may upon cause shown allow from the date of the decree complained of or within six

weeks from the date of the grant of the certificate, whichever is the later date. The provision for time limit for making the printing deposit is

mandatory and if the period is sought to be extended it should be on a petition for the purpose which has to be ordered by the Court.

3. In this case leave was granted on 13-1-1958 and the printing deposit has not been made within 150 days contemplated in the rules referred to

above. Therefore the point which arises for consideration is whether this court has got power to extend the period if sufficient cause is shown.

4. The earliest decision of this Court is *Ramayya v. Lakshmayya*, ILR 1938 Mad 1007 : AIR 1938 Mad 796, where a full bench of this Court has

held that the Court has power under Rule 9 of the Privy Council Rules to extend the period allowed for furnishing the security and the making of

the deposit required by Order XLV, Rule 7 of the CPC beyond the periods mentioned therein but the power should not be exercised without

cogent reason.

The effect of the amendment of Order XLV Rule 7 of the Code is to limit the discretion of the Court in granting further time to a maximum period

of sixty days beyond ninety days which the applicant has of right and if that provision stood alone the court would have no discretion to grant time

beyond the further period of sixty days. But Rule 9 of the Privy Council Rules leaves a discretion in the Court to extend the time and by reason of

Section 112 of the Code that rule must prevail over Order XLV, Rule 7 of the Code.

5. In *Pitchaiah v. Narasimhacharyulu*, 1956 2 Andh WR 106 : AIR 1956 Andh WR 120, a full bench of the Andhra Pradesh High Court has held :

The provisions of Order 45 Rule 7, CPC are only directory and not mandatory. They do not provide for a penalty for failure to comply with the

requirements laid down therein. It is only Rule 9 of the Privy Council Rules (now Rule 3 of Order 12 of the Supreme Court Rules) which while

providing for the consequences of default also enables the court at the same time to pass such further or other orders as the justice of the case

requires.

6. The Orissa High Court has held in *Pitamhari Dibya Vs. Chandrasekhar Praharaj*

and Others, thus :

A rule of procedure fixing time should ordinarily be held to be obligatory and cannot without strong reasons be deemed to be directory unless the

power of extending the time is given to the Courts. It would, therefore, appear that the Court has no discretion to extend the time beyond 150 days

prescribed under Order 45 Rule 7. But the Court is bound to give effect to the rule of the Supreme Court in preference to the provisions of the

CPC when a conflict between the two arises. Therefore the Court has power to extend time by virtue of the express provision in Rule 5 of the

Supremo Court rules. But this power should be exercised with great caution only where there are cogent reasons for doing so.

7. The Nagpur High Court has held in *Gulam Hussain v. Mansurbeg*, AIR 1952 Nag 302, that the time for furnishing security for costs can be

extended beyond that which is prescribed in the second part of Rule 7 of Order XLV but that a sufficiently strong case will have to be made out

before this indulgence can be granted. Ordinarily the position in Rule 7 must be adhered to; very cogent reasons will have to be given before the

court will enlarge the time prescribed by the Code.

8. In *Smt. Gunwanti Devi Vs. State of Bihar and Others*, , is was held thus: --

It is true that the time for depositing security under Order 45 Rule 7 would expire in this case on the 1st of February, 1957 but we have a

discretion in a proper case to extend the time even beyond the limit provided by Order 45 Rule 7 because of the provisions of Order 12 Rule 3 of

the Supreme Court Rules, read with Section 112 of the Code of Civil Procedure, That is the view expressed by a division bench of this High Court

in *S. A. No. 61 of 1952* in its order dated the 29th January, 1954 and also by another division bench of this High Court in *S. A. No. 129 of 1952*

in its order dated the 27th July, 1953.

9. The learned Additional Government Pleader invites my attention to an unreported decision of this Court of similar import by Krishnaswami

Nayudu and Basheer Ahmed Sayeed, JJ. in *S. A. Nos. 2038 and 2039 of 1950*.

10. In these circumstances I hold that I have got power to extend the time provided strong and convincing grounds are put forward for granting

extension or time asked for.

11. The learned Advocate for the Petitioner Mr. Mohan Kumaramangalam points out that till now though the High Court office had no obligation

to do so by courtesy a memo was being sent to the advocates concerned calling for deposit of printing charges. The practice is said to have

become so common that the advocates awaited the receipt of memos for depositing printing charges. The office note also refers to the fact that

there has been such a practice. In other words the learned Advocate has made out that it was due to no wilful default on the part of his client that

the printing charges have not been deposited in time.

I need not point out the general mle that no man can be prejudiced by any act of court the maxim being ""Actus curiae, neminem gravahit"". It is the

duty of court in such cases to help the peti tioner as to avoid the cancellation of the certificate granted to him and for which he has not in any way

wilfully contributed. Therefore I excuse the delay and give one week"s time to deposit the print ing charges.