
(1975) 11 CAL CK 0018
In the Calcutta High Court
Case No : Appeal No. 184 of 1975

Santimoy Dey

APPELLANT

Vs

Suriya Properties Private Ltd. and Others

RESPONDENT

Date of Decision : 27-11-1975

Acts Referred:

Limitation Act, 1963 — Section 12(2)

Citation : AIR 1976 Cal 81 : 80 CWN 168

Hon'ble Judges : Sankar Prasad Mitra, C.J.; S.K. Datta, J

Bench : Division Bench

Advocate : Somenath Chatterji and Soumen Ghose, for the Appellant; S.L. Saraf and Indrani Chatterji, for the Respondent

Final Decision : Dismissed

Judgement

Sanker Prasad Mitra, C.J.—On the 16th August, 1958, the State of West Bengal requisitioned three rooms on the first floor and one room on the second floor of premises No. 153/34, Acharya Prafulla Chandra Road, Calcutta-6 from Suriya Properties Pvt. Ltd. These rooms were allotted for residential purposes of Shri Chandrahas Dey, an employee of the State Government who was working at the material time at the Lake Depot of the State Transport Corporation.

2. On April 1, 1965, Chandrahas was transferred to Durgapur. He requested the State Government that the requisitioned property should be transferred to Santimoy Dey, the present appellant, who was an Upper Division Clerk of the Health Department of the Government and a younger brother of Chandrahas. He asked for this transfer to enable the members of his family to reside in the requisitioned premises. The Government of West Bengal, it appears, complied with the request. Thereupon Suriya Properties Private Limited, as the owner of the premises, filed an application under Article 226 being Matter No. 394 of 1965, challenging the said transfer. Santimoy Dey was a party to this application.

3. Mr. Justice Ghose, on the 17th July, 1973 quashed the allotment order of the

West Bengal Government in favour of Santimoy Dey.

4. The State of West Bengal preferred an appeal against the judgment of Mr. Justice Ghose on the 24th December, 1973, being Appeal No. 398 of 1973. Santimoy Dey was the respondent No. 3 in this appeal.

5. On the 21st June, 1973, the Land Acquisition Collector gave notice to Santimoy to vacate the requisitioned premises by the 31st August, 1974, stating that the Government had decided to de-requisition the premises.

6. The said Appeal No. 398 of 1973 came up for hearing before me and my learned brother Mr. Justice S. K. Roy Chowdhury on August 10, 1974. When the appeal was called on for hearing, Counsel for the appellant stated that his instruction was not to proceed with the appeal. The appeal was dismissed and all interim order were vacated.

7. On July 30, 1974, the First Land Acquisition Collector gave notice to Santimoy again to vacate the requisitioned premises by November. 1974. On the 17th February, 1975, the Deputy Secretary, Land Revenue Department informed Santimoy that he should vacate by the 31st March, 1975, positively, failing which, action according to law would be taken. On the 4th April, 1975, the First Land Acquisition Collector served a notice under Sub-section (1) of Section 7 of the West Bengal Premises Requisition and Control (Temporary Provisions) Act 1947 on Santimoy to vacate the premises within 14 days. Santimoy, on 21-4-1975, filed an appeal before the Commissioner, Presidency Division u/s 8 against the First Land Acquisition Collector's order aforesaid.

8. Again, on the 28th April, 1975, the First Land Acquisition Collector served notice u/s 9 of the said Act, stating that possession of the premises will be taken by the Police on May 8, 1975 at 3 P. M.

9. Thereupon, on the 5th May, 1975, Santimoy filed an application under Article 226 challenging the order u/s 9 of the West Bengal Premises Requisition and Control (Temporary Provisions) Act in the appellate side of this Court. He obtained a rule and an injunction restraining the respondents from proceeding with or taking any steps in terms of the said notice u/s 9.

10. On the 10th June, 1975, Santimoy filed the present Appeal No. 184 of 1975 against the order of Mr. Justice S.C. Ghose passed on the 17th July, 1973.

11. On August 25, 1975, Suriya Properties Pr. Limited made an application to us stating that the Memorandum of Appeal filed on the 10th June, 1975, by Santimoy Dey be taken off the file or rejected or dismissed. The principal contention being that the appeal is barred by limitation.

12. Now, the order appealed against was passed on the 17th July, 1973. The time for filing of appeal against the order under Article 117 of the Limitation Act, 1963, was thirty days. But Section 12(2) of the Limitation Act, 1963 provides as follows:--

"In computing the period of limitation for an appeal or an application for leave to appeal or for revision or for review of a judgment, the day on which the judgment complained of was pronounced and the time requisite for obtaining a copy of the decree, sentence or order appealed from or sought to be revised or reviewed shall be excluded."

13. The appellant's contention is that the order was passed on the 17th July, 1973. He applied for a certified copy of the order on the 18th July, 1973. He obtained the certified copy on the 31st May, 1975 and filed the appeal on the 10th June, 1975. If we deduct, therefore, the period taken for obtaining a copy of the order the appeal is well within time. Prima facie the appellant's contention is sound but there are further facts to be gone into to reach a proper conclusion.

14. The word "requisite" in Sub-section (2) of Section 12 was construed by the Judicial Committee of the Privy Council in *J.N. Surty v. T.S. Chettyar* 32 CWN 845 : 55 IA 161 = (AIR 1928 PC 103). At p. 170 (of Ind App) = (at pp. 105, 106 of AIR) it is stated:

"The word "requisite" is a strong word; it may be regarded as meaning something more than the word "required" It means "properly required" and it throws upon the pleader or counsel for the appellant the necessity of showing that no part of the delay beyond the prescribed period is due to his default."

15. In the instant case we have seen that an appeal against the order of Mr. Justice Ghose dated the 17th July, 1973, was filed by the State of West Bengal on the 24th December, 1973 and that appeal was dismissed on the 10th October, 1974. The present appellant filed his appeal against the same order on the 10th June, 1975.

16. It is in evidence that the present appellant was present in Court while Matter No, 394 of 1975 was going on before Mr. Justice Ghose vide paragraph 10 of the petition of Suriya Properties Private Limited, affirmed by the affidavit of Anandjee Jiwandas Suriya on the 25th August, 1975.

17. In the matter of obtaining certified copies of order or decrees on the Original side, a certain procedure is followed. That procedure has been noted by a Division Bench consisting of Chief Justice Chakravarti and Mr. Justice Lahiri (as he then was) in an appeal from original order No. 160 of 1957 (Cal). (*Pratiya Bala Mitra v. Gour Lal Mitra*). The judgment was delivered on the 25th August, 1958. In this judgment the long established practice of this Court has been judicially noticed. Chief Justice Chakravarti observes:

"It is stated by the office that no certified copy of any order or decree can be supplied till the decree or order has been filed and the copying department cannot possibly become aware whether a decree or order has or has not been filed, unless it is informed. There has accordingly grown up a practice and it is now a practice of very long-standing that immediately after a decree or order is filed, a party who has put in a requisition (for a certified copy informs the

Copying Department of the fact and then the Copying Department proceeds to mark the folios"

18. The practice, therefore, is that the party applying for a certified copy of an order or decree has to inform the Copying Department that the order or decree has been filed and then the Copying Department notifies to him the folios required. In the instant case before Mr. Justice Ghose there were three Parties principally -- The Suriya Properties Private Limited, the State of West Bengal and Santimoy Dey. The order was made, as we have seen, on the 17th July, 1973. The order was completed and filed on the 24th September, 1973. Suriya Properties Private Ltd. were notified of the requisite folio and stamp on the 25th September, 1973 which shows that on or before that date they had informed the Copying Department that the order had been filed. Suriya Properties Pvt. Limited obtained the certified copy on the 27th September, 1973.

19. Shri N.C. Mitra, Solicitor for the State of West Bengal, was notified of the requisite number of folios and stamp on November 26, 1973, which again shows that he had informed the Copying Department on or before November 26, 1973 that the order had been filed. Shri N.C. Mitra obtained the certified copy on January 9, 1974. So far as the present appellant, Santimoy Dey, is concerned, he was notified of requisite number of folios and stamp only on May 17, 1975. This shows that although the two other parties had informed the Copying Department of the filing of the order on or before September 25, 1973 and November 26, 1973, Santimoy Dey did not inform the Copying Department that the order had been filed until May, 1975. On these facts we are unable to state that the time taken by Santimoy Dey in obtaining the certified copy of the order was a time "requisite", that is to say, was a time "properly required". A Division Bench of the Punjab and Haryana High Court in *National Tobacco Co. Employees' Union, Jullundur Vs. Manohar Singh, Presiding Officer, Labour Court Jullunder and Another*, also took a similar view.

20. On the facts and in the circumstances of this case, therefore, we are of opinion that the present appeal is barred by limitation. Santimoy Dey has not been able to explain to our satisfaction in the context of the attending circumstances as to why he did not inform the Copying Department that the order had been filed for nearly two years. We do not thus find any sufficient cause for his not preferring the appeal within time. The appeal is dismissed. No order as to costs.

S.K. Datta, J.

21. I agree.