

(1919) 04 PAT CK 0007
In the Patna High Court

Seth Jahar Mal

APPELLANT

Vs

G.M. Pritchard

RESPONDENT

Date of Decision : 08-04-1919

Acts Referred:

Citation : AIR 1919 Patna 503 : 52 Ind. Cas. 225

Hon'ble Judges : Dawson Miller, C.J.;Roe, J

Bench : Division Bench

Judgement

Miller, C.J.—In this case the plaintiffs sued the Gangpur Light Tramway Company, Ltd., and Mr. Pritchard, their manager, to recover a sum of Rs. 3,945, the principal amount of a loan, together with interest for money lent to Mr. Pritchard, alleging that the money was borrowed by him as manager on behalf of the Tramway Company. They succeeded before the Subordinate Judge in obtaining a decree against both Mr. Pritchard and the Company. That judgment was dated the 28th August. 1916 and, with a view to appeal, the defendant Company, on the same day, applied to obtain copies of the judgment and decree. On the 2nd September they were noticed by the office of the requisite number of folios and stamps required. These folios and stamps were supplied in due course, and the copy was ready for delivery on the 9th September. According to the rules the defendants had 30 days for appealing reckoned from the 9th September, but from the 25th September to the 29th October the Courts were closed in consequence of the vacation, so that the time was, therefore, extended until the first day after the opening of the Court after the vacation, viz., the 30th October. The result was that instead of having only 30 days for lodging their appeal the defendant Company did, in fact, have over 50 days altogether. Notwithstanding this, however, their memorandum of appeal was not filed until the 8th November, which was eight days after the time when it ought to have been filed.

2. When the appeal came on for hearing before the District Judge he had to consider, in the first instance, whether he should, in the circumstances which were disclosed, extend the time for filing the appeal in favour of the defendant

Company, The case put forward by the defendants before the District Judge is contained in two affidavits, one made by the Managing Agent of the Company, Mr. Bhupendra Nath Basu, and another made by Mr. Kali Das Lahiri, who is the Head Assistant of the Company in Calcutta. The first affidavit does not throw very much light upon this question. In effect it says that the Managing Agent left Calcutta for Simla to attend a meeting of the Viceroy's Council on the 2nd September and was detained there until the 27th September and arrived back in Calcutta on the 29th September. That he instructed his Head Assistant to take the opinion of the Directors as to the course to be taken with a view to an appeal, that so far as he was concerned he left the matter there and went away to Darjeeling for the Puja holidays and came back again on the 29th October, which was the last day of the vacation. Between the time that he went to Darjeeling and the time when he came back he does not appear, so far as the affidavit is concerned, to have communicated at all with Mr. Kali Das Lahiri to see what steps were being taken with a view to prosecuting the appeal. He seems to have left everything in that gentleman's hands.

3. The second affidavit, that of Mr. Kali Das Lahiri, the Head Assistant, is to this effect. He Corroborates what is said in the previous affidavit, and he says that he did consult the Directors; on the 16th October he obtained their consent to appeal, and they directed him to file the appeal. As the Courts were closed until the 30th October he could not file the appeal until that day arrived; but until the 29th October no steps at all were taken, either to consult his Vakil or legal adviser at Sambalpur where the appeal had to be filed, or to have the necessary memorandum of appeal prepared. Although it is not definitely stated in his affidavit I think perhaps, it may be inferred in his favour that he intended, on the 29th October, to leave Calcutta and go to Sambalpur for the purpose of having his appeal filed in the ordinary way; but I should like to mention, in passing, that in so doing he was running things very fine. It is, we are told, about a day's journey and rather a difficult journey by train from Calcutta to Sambalpur, and if he had left on the 29th October he could not have arrived at Sambalpur till the following day, which was the last day for filing the appeal. There he would have had to consult his legal adviser, and the memorandum of appeal would have had to be prepared and filed on the same day. It is just possible that he may have been able to do that, but the reason which he alleges for not proceeding to Sambalpur on the 29th October is that he was taken ill on that day and was confined to his bed until the 1st November. He says that he was so ill in fact that it was impossible for him to communicate his inability to go to Sambalpur to Mr. Bhupendra Nath Basu, the Managing Agent. He does not say in his affidavit that he was so ill that he was unable to instruct anybody else to proceed to Sambalpur on his behalf to take the necessary steps for filing the appeal. I suppose all that was, necessary for the purpose would be the documents in the case, which would have to be laid before his Pleader in order to put him in possession of the necessary facts for filing the appeal. These, it seems to me, could easily have been handed over to somebody else on his behalf; and

although there is a Doctor's certificate to say that he was ill of colic for four days from the 29th October, this does not in itself seem to me to be a sufficient reason for failing to file the appeal in time.

4. Had it been necessary for me to decide this question and to use my discretion in the matter, I should certainly have come to the conclusion that no sufficient reason had been made out, but the learned Judge who had to determine this question arrived at the conclusion that sufficient cause had been shown for the delay. If the matter had stood there I should have been very loth, whatever my own view of the matter, to interfere with his discretion; but the learned Judge seems to me to have based his decision upon entirely erroneous grounds. Although he was entitled and in fact it was his duty to exercise his discretion, if one finds that the conclusions of fact at which he arrived which were the basis of his decision were not such as could possibly support that decision, then I think this Court is entitled, and, indeed, is bound to say that that discretion was not exercised in a legal and proper manner. What the learned Judge found was this. He accepted the facts set out in the affidavits as he was entitled to do and came to the conclusion that the Head Assistant was prevented from travelling from Calcutta to Sambalpur on the 29th October. But he goes on and says:

Although it appears remiss on his part not to have taken steps to have had the appeal forwarded by other means, it would be a hardship on the appellants to debar them owing to the carelessness of a servant from the appeal.

5. Now having read that part of the Teamed Judge's judgment it seems to me that the conclusion at which he arrived was in fact not that the illness of the Head Assistant prevented this appeal from being filed in time, but that if the Head Assistant had exercised ordinary diligence notwithstanding his illness the appeal might have been filed within the proper time, and it was only through his remissness that this course was not adopted. Then the learned Judge goes on and says it would be a hardship on the appellants to debar them owing to the carelessness of a servant from the appeal. I entirely dissent from the view taken by the learned Judge. If parties in this Court choose to entrust these matters to their servants then they must take the consequences of any remissness or negligence which may be exhibited on the part of their servants, and they cannot come to Court and say: "This is a very hard case. Had my servant done his duty as I expected he would, then my appeal would have been in time, therefore, I pray that some indulgence may be shown to me." That is not a ground upon which the Courts ought to exercise in their discretion any indulgence in favour of litigants, and, therefore, I think that the decision of the learned District Judge in allowing the time to be extended for filing this appeal cannot possibly stand.

6. There is one other matter I should like to draw attention to. It is a matter which is continually being brought to the notice of the Courts in this country, and that is this. It almost invariably happens that one party or the other intending to appeal or to take some other step in the course of an action for which a time limit is prescribed by the rules, waits until the very last moment before taking

that step. Sufficient time in all these cases is granted to the parties for doing whatever may be necessary for furthering their suit, and if they choose to put off until the very last minute either the filing of the appeal or the taking of any other steps which are a necessary part of the prosecution of their case they run a very great risk, and it does not seem to me that it is sufficient for a party to come to Court and say that if everything had gone absolutely smoothly, and if no unexpected accident had happened, he would have been in time in taking the steps required for his appeal. One is not entitled to put things off to the last moment, and hope that nothing will occur which will prevent them from being in time. There is always the chapter of accidents to be considered, and it seems to me that one ought to consider that some accident or other may happen which will delay them in carrying out that part of their duties for which the Court prescribes a time limit, and if they choose to rely upon everything going absolutely smoothly and wait till the very last moment, I think they have only themselves to blame if they should find that something has happened which was unexpected but which ought to be reckoned with, and are not entitled in such circumstances to the indulgence of the Court.

7. For these reasons I think this appeal must be allowed upon the first point which has been raised. It is, therefore, not necessary to go into the merits of the appeal, whatever these merits in this particular case may be. The appeal will be allowed with costs here and in the lower Appellate Court. The judgment of the District Judge will be set aside, and the decree of the Subordinate Judge against the appellants as well as the other defendant will be restored.

Roe, J.

8. I agree. The District Court's order made upon the facts found is directly contrary to the principle that the master is responsible for the negligence of his servant. I also desire to associate myself entirely with the views of the learned Chief Justice with regard to the most objectionable practice of putting off to the last moment what ought to be done at leisure. Those who take this course must accept the consequences of an accident at the eleventh hour.