
(1959) 09 P&H CK 0004
In the Punjab And Haryana At Chandigarh
Case No : F.A.O. No. 5 of 1959

Shamlal Thakar Dass Aggarwal

APPELLANT

Vs

Punjab National Bank Ltd. and Others

RESPONDENT

Date of Decision : 07-09-1959

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 41 Rule 1
Limitation Act, 1963 — Section 5

Citation : AIR 1960 P&H 370

Hon'ble Judges : I.D. Dua, J

Bench : Single Bench

Judgement

(1) When this appeal and F. A. So. Nos. 6, 7 and 8 of 1959 came up for hearing before me on 28-8-1959 a preliminary objection was raised that the appeals not being accompanied by copies of the decree. They are not competent; it is asserted on behalf of the respondents that the decree sheets were actually prepared. I have been referred by Mr. S. L. Puri to a judgment by Bishan Narain J. in F. A. O. No. 95 of 1954 (Punj). Mr. Bhagirath Dass for the appellant wanted time to look up the position and, if necessary, to put in copies of the decree sheets as, according to the counsel, the decision by Bishan Narain J. has not so far been reported in the law reports. Today Mr. Bhagirath Dass has filed an application under S. 5 of the Indian Limitation Act praying that the delay in the filing of the decree may be excused and the appeal be treated as if properly filed. It is stated in para 7 that it was for the first time that on 28-8-1959 the appellant's counsel came to know that a copy of the decree was also necessary to be filed in this case it has also been mentioned that the High Court office did not return the memorandum of appeal for re-filing along with a copy of the decree with is normally done. Stating that this omission was due to the bona fide belief that no copy of the decree was necessary and that only an attested copy of the order was required to be filed, the prayer, as mentioned above, has been made in this petition.

In support of this request the counsel has relied on Arura v. Karam Din AIR 1947

Lah 76 , where Abdur Rahman J. extended period under S. 5 of the Limitation Act because the appellant in that case had chosen wrong forum of appeal owing to mistake and unjustified conduct of the respondent. I have also been referred to AIR 1937 276 (Privy Council) where it was observed that mistaken advice given by a legal practitioner may, in the circumstances of a particular case give rise to sufficient cause within the meaning of S. 5 of the Limitation Act though there was no general doctrine which saves parties from the results of wrong advice. In the reported case their Lordships of the Privy Council considered the view taken by the counsel concerned not to be unreasonable nor could the counsel be deemed to have been negligent. In Harjas Mal v. Kahni 85 PR 1913 to which also reference has been made the Court allowed a copy of the decree to be filed later where through carelessness a copy of a witness's deposition had been filed in place of a copy of the decree and the clerk of the Court had overlooked the error.

(2) Mr. Puri on behalf of the respondents has drawn my attention to the provisions of O. XLI, R. 1 of the CPC which lays down that the memorandum of appeal 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. It is contended that this Court has no jurisdiction or power to dispense with a copy of the decree and this appeal cannot be considered to have been properly filed. It is emphasised that upto now no copy of the decree has been placed on the record, with the result that the memorandum of appeal is still not accompanied by a copy of the decree. It is not denied by the appellant that the memorandum of appeal is not accompanied by a copy of the decree; it is merely stated that as soon as the counsel came to know of the defect he applied urgently for a copy of the decree but the same has not yet been supplied to him.

(3) Section 5 of the Limitation Act under which the above application has been filed today is in the following terms:

"5. Any appeal or application for a review of judgment or for leave to appeal or any other application to which this section may be made applicable by or under any enactment for the time being in force may be admitted after the period of limitation prescribed therefore, when the appellant or applicant satisfies the Court that he had sufficient cause for not preferring the appeal or making the application within such period.

Explanation: The facts that the appellant or applicant misled by any order, practice or judgment of the High Court in ascertaining or computing the prescribed period of limitation may be sufficient cause within the meaning of this section."

This section in terms confers power to admit appeals or application for a review of judgment or for leave to appeal or any other application to which this section may be made applicable after the period of limitation prescribed therefor, when 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. The question is: Can I admit the appeal today under this section? A copy of the decree having not yet been filed and there been no poser in this Court to dispense with it, I do not think it is open to this Court to admit this appeal.

Section 5 implies that when the Court is requested to admit the appeal, after the expiry of the prescribed period, the appeal is otherwise complete and competent and it is only the delay in preferring it on account of sufficient cause which is to be excused or condoned. If the appeal is still incomplete, as is the case before me, I do not think it is competent for this Court to pass an order admitting the appeal u/s 5, of the Indian Limitation Act.

(4) I am, therefore, constrained to uphold the preliminary objection and hold the present appeal to be incompetent. It would certainly be open to the counsel for the appellant to prefer a proper appeal accompanied with necessary documents as and when he secures copies of the necessary decree sheets and then apply to the Court for whatever relief is under the law open to him.

(5) For the reasons given above, this appeal is held incompetent and is disallowed. There will, however, be no order as to costs.

(6) Appeal dismissed.