
(1964) 07 AHC CK 0017

In the Allahabad High Court

Case No : Supreme Court Appeal No. 30 of 1964

Sheikh Maula Bux

APPELLANT

Vs

Union of India (UOI)

RESPONDENT

Date of Decision : 30-07-1964

Acts Referred:

Constitution of India, 1950 — Article 134(1)
Limitation Act, 1963 — Section 12, 30, 5

Citation : AIR 1965 All 14

Hon'ble Judges : G.D. Sahgal, J;B.N. Nigam, J

Bench : Division Bench

Advocate : Sudhir Shanker, for the Appellant; Uma Shanker, for the Respondent

Final Decision : Dismissed

Judgement

Nigam, J.—The judgment in the appeal was delivered by us on 20th December, 1963. The present application for leave to appeal to the Supreme Court under Article 134(1)(a) and (c) of the Constitution of India was presented on 15th April, 1964. The office has objected that this application is barred by time. The office report is, however, not quite clear.

2. We have heard the learned counsel for the parties on the question of limitation. The learned Junior Standing Counsel has urged that the application is barred by time.

3. Facts relevant for the purpose are that an application for a copy of the judgment was filed on 21-12-63 and it was ready for delivery on 8-1-64. Annexure 3 is a copy of the decree. There is no clear indication on the copy of the decree as regards the date of the application for copy and the date of posting of the notice on the notice board but certain figures are mentioned at the foot of the copy on the last page and it appears to us that they furnish satisfactory information on these points. If these figures are accepted, the copy for application was given on 14th January, 1964. This is also the date on the stamp

for Rs. 1.50 Paisa affixed on the first page of the decree. According to this entry the notice was posted on the notice board on 10-2-64. Apparently, this information is also reliable for the date under the signature of the certificate of true copy is 10-2-64.

In any case, there is no challenge to the statement that the application for the copy of the decree was presented on 14-1-64 and the notice that it was ready was posted on the notice board on 10-2-64.

4. In the circumstances, if the new Limitation Act (Central Act XXXVI of 1963) applies without the provisions of Section 12, the application would be barred by time. If, on the other hand, the old Limitation Act, 1908 is to apply the application would be within time.

5. The question, therefore, turns on the interpretation of Clause (b) of Section 30. That clause reads:

"(b) Any appeal or application for which the period of limitation is shorter than the period of limitation prescribed by the Indian Limitation Act, 1908, may be preferred or made within a period of ninety days next after the commencement of this Act or within the period prescribed for such appeal or application by the Indian Limitation Act, 1908 whichever period expires earlier."

As indicated, the application would be within time if the old Limitation Act applies. The period of ninety days, if in computing thereof Section 12 is not to be utilised, would expire on 31-3-64 and the application would be clearly barred by time.

6. The question, before us, therefore, is whether in computing this period of ninety days mentioned in Clause (b) of Section 30 the period taken in obtaining a copy of the judgment and decree is to be excluded or not. The contention of the learned Junior Standing Counsel before us is that the law has simply allowed a period of grace. The new Limitation Act would be applied, but it is not to be applied during the ninety days immediately following the enforcement of the new Act but this period of ninety days is not to extend the period of limitation prescribed under the old Act. The argument is certainly attractive and it does not appear to be contradicted by the language of Section 30 Clause (b) of the 1963 Limitation Act. There might, however, be certain cases of obvious hardship. Supposing a judgment were to be delivered on the 20th October, 1963. Before the expiry of the limitation then prescribed an application for copy were to be given on 23-12-1963.

If in that case the copy of the judgment was not available within 90 days counting from 1-1-1964, the date of the enforcement of the new Act, the period of limitation prescribed under the new Act, and the period of ninety days both would have expired without the blame really being that of the applicant. On the other hand, it will be observed that the period of limitation provided under Articles 150 to 174 and Articles 176, 177 and 178 and 179 of the First Sch. to

the old Limitation Act was a period of 90 days or less. It is only in Articles 175, 180, 181, 182 and 183 that the period of limitation was more than ninety days. Similarly, in the present Limitation Act Articles 114 to 133 provide for a limitation of 90 days or less. Articles 134 to 137 provide a period of limitation longer than 30 days.

Thus if the interpretation of Section 30 Clause (b) is that in computing the period of 90 days, the time taken for obtaining the copies of the decree and the judgment is to be allowed then the whole Clause (as applicable to Articles 114 to 133) will become infructuous for this period of 90 days will expire after the period prescribed under the old Limitation Act and as this sub-clause provides that an appeal or application may be presented either within 90 days or the period prescribed under the old Limitation Act whichever period expires earlier, the clause will become redundant inasmuch as the period prescribed under the old Limitation Act will always expire earlier except in the case covered by the few Articles 175 and 180 to 183 (of the old Act) mentioned by us earlier. We have to be guided by the strict language of the sub-section and in our view this period of 90 days is not to be computed taking the provisions of Section 12 of the new Limitation Act into consideration Cases of hardship can always be covered by an application u/s 5 of the Indian Limitation Act.

6a. In accordance with our view, the position would be that the petitioner or the appellant can file the appeal within a period of limitation under the old Limitation Act or on or before 31-3-1964 whichever date falls earlier. He will of course have the advantage of filing the appeal or application under the provisions of the new Limitation Act if that is advantageous to him. We are, therefore, of opinion that this application is barred by time.

7. The learned counsel prays for an opportunity to file an application u/s 5 of the Indian Limitation Act. Without allowing him any time for the purpose, we will not pass final orders on this application during the next ten days. In that period, the learned counsel may if he so wishes, file an application u/s 5 of the Indian Limitation Act. If any such application is filed, notice should be given to the learned standing counsel and the matter should be listed before us after notice to the learned counsel. If no such application is given, the present application should be listed for final orders of dismissal on the ground of limitation on August 11, 1964 before us if necessary, in chambers.