
(1972) 06 GAU CK 0013
In the Gauhati High Court
Case No : Civil Revision Case No. 4 of 1972

Simla Konglui Tangkhul	Vs	APPELLANT
Wangmazum Tangkhul and others		RESPONDENT

Date of Decision : 21-06-1972

Acts Referred:

Limitation Act, 1963 — Section 12, 5

Citation : AIR 1973 Guw 60

Hon'ble Judges : B.N. Sharma, J

Bench : Single Bench

Advocate : G. C. Roy, for the Appellant;

Final Decision : Allowed

Judgement

B.N. Sarma, J.—The only question which, requires determination in the revision petition is the true meaning and purport of the explanation u/s 12 of the Indian Limitation Act. 1963 (Act 36 of 1963) hereinafter called the Act, or in other words, whether the time taken by the Court to prepare the decree before the application for copy thereof had been made should be excluded in favour of the appellant as time requisite for obtaining a copy of the decree.

2. The Second Subordinate Judge of Manipur pronounced the judgment in O. S. No. 12 of 1969 on 30-6-1971, where by he dismissed the suit. The decree was prepared and signed by the Court on 7-7-1971. The plaintiff applied for the copy of the judgment on 5-7-1971 and for that of the decree on 8-7-1971. Both the copies were prepared, signed and delivered to the plaintiff on 8-7-1971, and thereafter the appeal was filed on 10-8- 1971 with an application u/s 5 of the Limitation Act for condonation of the delay for 3 days, that is, from 7-8- 1971 to 9-8-1971.

3. In deciding the application u/s 5 of the Act, the learned District Judge held that in view of the explanation u/s 12, the appellant would not be entitled to get benefit of the time from the date of judgment till the decree was signed, as the

time requisite for obtaining the copy, as the application for copy of the decree was filed after the decree was signed. In this view of the matter he held that the last date for filing the appeal was 4-8-1971. As the appellant prayed for condonation of the delay only with effect from 7-8-1971 till 10-8-1971 and no explanation for the delay for the preceding 3 days was offered, the learned District Judge dismissed the application u/s 5 of the Act by the impugned order.

4. The O. Ps. in the revision petition did not enter appearance in spite of receiving notices and accordingly the revision petition was heard ex parte.

5. Shri G. C. Roy, the learned counsel for the Petitioner, submitted that the learned District Judge committed an error in law in rejecting the application u/s 5 of the Act, holding that the appellant was not entitled to the benefit of the period from the date of judgment till the decree was signed as the period requisite for obtaining the copy. His contention is that this period should have been excluded in favour of the appellant as the time requisite for obtaining the copy in view of the explanation u/s 12.

6. The learned District Judge devoted a part of his judgment in deciding the question as to whether the limitation for filing an appeal should be computed from the date when the judgment is pronounced or from the date when the decree is signed and relying on the decisions in *Rajeshwar Rai and Others Vs. Shankar Rai and Others*, and *Ramachandra Mardaray Deo v. Bhalu Patnaik*. AIR 11950 Ori 125 (FB) he held that it is to be computed from the date on which the judgment is pronounced. This question is not at all necessary for determination in the case of an appeal, because as observed in *Sri Ramachandra Mardaray Deo Vs. Bhalu Patnaik and Others*, itself, the interval between the date of judgment and the date of decree could always be excluded in view of the provisions of Section 12 of the Limitation Act. The case in *Sri Ramachandra Mardaray Deo Vs. Bhalu Patnaik and Others*, was in connection with Article 182 of the Indian Limitation Act (old) and in that case *Narasimham, J.*, delivering the majority judgment observed as follows in para, 3 of the judgment:

"So far as Arts. 152. 156 and other Articles dealing with limitation for appeals reviews, etc. were concerned, a direct decision of the question was not really necessary inasmuch as by relying on Section 12. Limitation Act the interval between the date of judgment and the date of decree could always be excluded."

7. The learned District Judge has observed in his judgment that it has clearly been laid down in the explanation u/s 12 of the Act that any time taken by the Court in preparation of the decree before an application for the copy thereof is made shall not be excluded and so the appellant is not entitled to get the benefit of that period as the time requisite for obtaining the copy.

8. It appears, the learned District Judge has not properly understood the implications of the explanation. What this explanation requires is that for the purpose of computing the time requisite for obtaining a copy of a decree, any time taken by the Court to prepare the decree before an application for copy

thereof is made shall not be excluded, that is, shall be included. It is not that such time shall not be excluded for the purpose of computing the period of limitation. Subsections (1) to (4) of S. 12 speak about the exclusion of time for the purpose of computing the period of limitation and the explanation speaks about the exclusion or non-exclusion of time for the purpose of computing the time requisite for obtaining the copy. The learned District Judge failed to notice the distinction between the purpose of exclusion under the sub-sections, and that under the explanation.

9. The language of the explanation is very clear and there is no scope for any ambiguity. As held in the majority judgment in *The State of Bihar Vs. Md. Ismail and Others*, the meaning that should be given to the explanation in Section 12 is that the time taken by the Court to prepare the decree before the application for copy is made shall be included as "the time requisite for obtaining the copy". As I have already pointed out, though an "obiter dicta", the view expressed in the majority judgment in *Sri Ramachandra Mardaray Deo Vs. Bhalu Patnaik and Others*, in the passage quoted above, is the same.

10. Before the Indian Limitation Act, 1963, was enacted there was a sharp difference of opinion amongst the different High Courts in regard to cases where an application for a certified copy of the decree is made after the said decree is drawn up. In dealing with such cases, the Bombay, Calcutta and Patna High Courts, held that the period taken in drawing up of the decree would be part of the period requisite for obtaining the copy, while other High Courts took a contrary view. The explanation given in Section 12 of the new Limitation Act of 1963, appears to have settled the difference amongst the High Courts about the inclusion or otherwise of the period of time taken by the Court to prepare the decree before an application for a copy thereof is made when such an application is filed after the preparation of the decree. At present, as required under the explanation, the said period shall not be excluded, that means, shall be included as time requisite for obtaining the copy.

11. As a result of the foregoing discussion. I feel constrained to hold that the time taken by the Court to prepare the decree in the instant case, that is from 30-6-1971 to 7-7-1971, has got to be included for the purpose of computing the time requisite for obtaining the copy although the application for a copy of the decree was made after the decree was signed. Under sub-section (2) of S. 12. the date on which the judgment was pronounced and the time requisite for obtaining a copy of the decree have got to be excluded while computing the period of limitation. That being the position, the appellant gets benefit of the entire period from 30-6-1971 to 7-7-1971 as the time requisite for obtaining the copy and this period has to be excluded for the purpose of computing the limitation under sub-section (2) of S. 12.

12. As already mentioned, the appellant has shown cause for his inability to file the appeal during the period from 7-8-1971 to 9-8-1971 and the learned District Judge has accepted the same. There was therefore, no justification to reject the

application u/s 5 of the Act.

13. In the result, the order of the District Judge, complained of, is set aside. The application u/s 5 of the Act filed by the petitioner-appellant before the District Judge is allowed. The revision petition is allowed without any order as to costs. Send down the record immediately to proceed with the appeal.