

(1988) 04 OHC CK 0015
In the Orissa High Court
Case No : Misc. Case No. 408 of 1987

Smt. Aparajita Dibya

APPELLANT

Vs

Binod Behari Patra

RESPONDENT

Date of Decision : 27-04-1988

Acts Referred:

Limitation Act, 1963 — Section 12, 5

Orissa High Court General Rules and Circular Orders — Rule 20

Citation : AIR 1989 Ori 271 : (1988) 66 CLT 557

Hon'ble Judges : S.C. Mohapatra, J

Bench : Single Bench

Advocate : S.K. Mohanty, for the Appellant; S.K. Ghosh, for the Respondent

Final Decision : Allowed

Judgement

S.C. Mohapatra, J.—The Stamp Reporter has raised an objection that the second appeal is barred by limitation by three days. Mr. S. K. Mohanty, the learned counsel for the appellant, submits that in case the period taken for filing the requisites for obtaining the copy would not be taken into consideration, the Stamp Report would be correct and as a measure of abundant caution, he has filed the application for condonation of delay,

2. Mr. Mohanty relied upon Rule 20 of Chap. I of Part IV in the General; Rules and Circular Orders (Civil), Vol. 1 of this Court under which three days are granted to deliver the requisites for copy. The rule reads as follows:

"The requisite folios and stamps shall be filed before the Head Comparing Clerk within three days of the giving of the notice prescribed in Rule 19. If this is not done the application may be rejected. If the application has been rejected a note to that effect shall be made against the entry of the application in the register, No. (R) 15. The comparing clerk while going round the offices to make estimates shall take with him the rejected applications and show them to the proper officers who shall sign the applications on the reverse and after restoring the

documents to the proper places make the appropriate entries in columns 7, 8 and 9 of Register No. (R) 17."

Interpreting a similar rule, Madras High Court in the decision reported in (1981) 2 Mad LJ 194 (Muthulakshmi v. Swaminathan) observed that the three days granted for filing the requisites to obtain the certified copy would, also be computed for the purpose of Section 12 of the Limitation Act

3. Perusal of Section 12 of the Limitation Act makes it clear that the time taken by the authority to supply the copy is to be excluded and the time taken by the applicant is not to be excluded. A defective application for copy is not to be entertained and is liable to be rejected. To protect the application from rejection three days period is granted to file the requisites. If the same are not filed within three days as provided, the application is liable to be rejected and thereafter, a fresh application is to be filed. This cannot be interpreted to be time-requisite for the purpose of obtaining a copy. With great respect, I am not able to agree with the view of the Madras High Court in the decision reported in (1981) 2 Mad LJ 194 (supra). Accordingly, the benefit which was given for protecting an application cannot be taken advantage of for the purpose of computing limitation. In this view of the matter, there is no doubt that there is delay of three days and the stamp Report is correct.

4. Mr. S. K. Mohanty, the learned counsel submitted that relying upon the aforesaid provision in the General Rules and Circular Orders (Civil), Vol. I of the Court as well as the decision of the Madras High Court reported in (1981) 2 Mad LJ 194 (supra), he filed the second appeal and the same is a bona fide mistake. There is force in the contention of Mr. Mohanty and this is a sufficient cause for delay. However, the respondent who has got a valuable right on account of the appeal being barred by limitation would be deprived of the same in case the delay is condoned. This prejudice of the respondent can be mitigated by payment of costs. In the aforesaid view of the matter, the delay is condoned subject to payment of Rs. 50/- as costs to Mr. S.K. Ghosh, the learned counsel for the respondent, which is paid in Court today. The misc. case is accordingly, allowed. No costs.