

(1970) 05 CAL CK 0007
In the Calcutta High Court
Case No : L.P.A.T. 1024 of 1970

Srish Chandra Chatterjee

APPELLANT

Vs

Sankalparani Mandal

RESPONDENT

Date of Decision : 27-05-1970

Acts Referred:

Limitation Act, 1963 — Section 12, 15, 2

Citation : 75 CWN 928

Hon'ble Judges : P.N. Mookerjee, J;Amiya Kumar Mookerji, J

Bench : Division Bench

Advocate : Miss Nirmala Kumari Chaturvedi, for the Appellant;

Judgement

1. This is an application for an injunction to restrain the execution of a decree for eviction, passed against the petitioner by the learned trial Judge on April 10, 1963, and affirmed on appeal to this Court by our learned brother, Chittatosh Mookerjee, J., on January 8, 1970. Our learned brother gave time to the petitioner to vacate the disputed premises till the end of April, 1970, in the first instance, to be enlarged up to the last day of December, 1970, if the required undertaking was filed.

2. The petitioner applied for leave, under Clause 15 of the Letters Patent, to appeal against the above judgment of this Court. That application was made on March 4, 1970, and leave was granted on April 8, 1970.

3. The appeal was actually filed on April 17, 1970. On April 21, 1970, the petitioner made the present application for a Rule nisi for injunction to restrain the opposite party from putting the above ejectment decree into execution. The application was put up before us on April 24, 1970, with a remark that the connected appeal was defective. The defect in question appeared from the Stamp Reporter's report, dated April 23, 1970, on the back of the Memorandum of Appeal, which report was to the following effect:

Nothing can be reported without the connected file. Though the file has been

requisitioned by us, it has not reached yet.

In view of the above report, we made the following order : "Let this application be put up after the report of the Stamp Reporter and the same be made as quickly as possible."

It was then put up before us with a supplementary report of the Stamp Reporter, dated May 16, 1970. The learned Stamp Reporter was of the opinion that the appeal was in time up to March 9, 1970 but out of time on April 17, 1970, the date of its presentation; or, in other words, out of time by 43 days. In the above report, reference was made to the learned Advocate's contention that she had applied for a copy of the judgment and decree appealed against, on 8th January, 1970, well within time, but the requisite notification for stamps and folios for the copies had not been made and that she was entitled to exclusion or deduction of time, requisite for obtaining the said copies, although, under the Rules of this Court, the same need not accompany the Memorandum.

4. With regard to the above contention of the learned Advocate, the learned Stamp Reporter reported that "the learned Advocate's request could not be acceded to at that stage, unless copies, when received, were produced for inspection as to coverage of the delay, involved in the case" with a remark that, "if the prayer for condonation be given effect to, then, the appeal will be in time.

5. From the facts, which have been set out above, it is sufficiently clear that the petitioner applied for certified copies of the judgment and decree on January 8, 1970, and that no notification has yet been made by the office for requisite stamps and folios. It is clear also that the petitioner applied for leave to appeal under Clause 15 of the Letters Patent on March 4, 1970, and that the said application was disposed of and leave was granted only on April 8, 1970, thus covering or consuming a period of about 36 days.

6. In the above circumstances, it has been contended before us by the learned Advocate for the appellant that, in the matter of computation of the period of limitation for the instant appeal, the petitioner will be entitled to deduction of the time, which has elapsed since the application for the copies was made and also of the time, spent for obtaining leave from this Court, the overlapping period being deducted only once.

7. Under the first head, the deduction will be under Sec. 12 of the Limitation Act; under the second, under the new Sec. 15 of the said Act, keeping in view, of course, the overlapping period, if any, which should not be deducted twice.

8. It is necessary, in the instant case, that the question of limitation with regard to the instant appeal should be decided immediately and should not be deferred, as, otherwise, the petitioner might suffer irreparable injury by having the decree for eviction executed against him while his application for injunction in this Court remains pending because of the above alleged defect and non-registration of the appeal. We, accordingly, proceed to decide the said question.

9. As to Sec. 12, it is now well settled by the decisions of this Court (vide (1) Jagannath Upadhyay v. Anna-rendra Nath Banerjee and ors., 61 C.W.N. 841 and (2) Sm. Nanda Rani Dassi v. Sm. Badibala Devi, 68 C.W.N. 585) following, explaining and applying the Privy Council decision in (3) J. N. Surty v. T. S. Chettyar, L.R. 55 LA. 161, that the time, requisite for obtaining copy of judgment and also of the decree would have to be deducted under the said section. It is true that, in those cases, copies of judgment were actually filed and the decisions were given on that basis. At the same time, it is to be noted that, in the instant case, although the petitioner has done all that is possible at this stage to obtain copy of the judgment and decree, the matter is lying in the office of this Court, without further action, for which the petitioner cannot be responsible and cannot be blamed and, at the present moment, his application remaining pending, the time for which the said application is pending, may well be taken to be time, requisite for purposes of obtaining the copy of the judgment and or decree in question and the same should be deducted in computing the period of limitation for the appeal and that will clearly bring the appeal well within time.

10. In the above view, it is not necessary for us to decide the other question, namely, under Sec. 15 of the Limitation Act but, as the point has been raised and has been considered by us, we will express our views on the same.

11. So far as this question is concerned, it seems to us that, although under the old Section 15, there might have been scope for argument that the pendency of a leave application would not be liable to be excluded in the matter of computation of the period of limitation for the connected appeal, the position has since changed under the new Limitation Act.

12. Under this new Act, Sec. 15 has been amended and the words, which have been added to the said section, namely, "for which the previous consent or sanction of the Government or any other authority is required in accordance with the requirements of any law for the time being in force, the time required for obtaining such consent or sanction shall be excluded", would, in our opinion, be sufficient to cover cases, where leave of the Court is necessary for the filing of any proceeding. According to this dictionary meaning, all the three words "consent", "sanction" and "leave" mean permission and it will be doing no violence to language and it would be quite in accordance with the section, both in letter and in spirit, to include the word "leave" within the words "consent" or "sanction".

13. We are not unmindful of the fact that the section uses the word "suit" but, on grounds, to be indicated presently, the same should include "appeal" and the section, in any event, its underlying principle, should be applied to appeals also, where the time or period, spent for the particular purpose, is beyond the control of the party and is entirely taken up by the Court in disposing of his relative application. The "context" reservation in the definition section (sec. 2) is, in our opinion, sufficient to permit inclusion of other proceedings, e.g. appeals and applications, within the word suit for the above purpose (vide, in this connection,

(4) Brij Mohan Lai v. Ram Sarup Singh and others, 2 I.C. 632). The obtaining of leave is a pre-requisite or condition precedent to the filing of the Letters Patent Appeal, and "it is, at least, an intelligible principle"--to quite the words of the Judicial Committee in (5) Nagendra Nath Dey, v. Suresh Chandra Dey, L.R. 59 LA. 282, at p. 288--that the time, spent for complying with this pre-requisite or condition precedent, should be permitted to be deducted in the matter of computation of the period of limitation. That principle underlies Sec. 15 of the Limitation Act and, in that context, the relative definition clause in Sec. 2 may well receive the above liberal interpretation. On this question of interpretation, reference may also be made to the well-known legal maxim of universal application that no one should be prejudiced by any act or omission of Court.

14. It is only necessary to add that what we have held above would not, in any way, be opposed to or inconsistent with the Judicial Committee's dictum or injunction against importing of equitable considerations in the matter of construction of provisions, fixing periods of limitation, in the above-cited case, that, obviously, refers to Articles under the Limitation Act and, to them, the rule of strict grammatical construction applies. To the exceptions however,--and the instant case is one of such exceptions, as it concerns itself with a deduction or exclusion" provision--the other rule of liberal construction applies, the underlying principle being that the construction should be in favour of the "right to sue. We would, accordingly, hold that, in the instant case, the appeal should be registered, if it is otherwise in form and free from defect, and, upon that view, we proceed to take up the connected injunction application for hearing.