

(2001) 11 MP CK 0044

In the Madhya Pradesh High Court

Case No : Letters Patent Appeal No. 454 of 2000

S.S. Kaushal

APPELLANT

Vs

State Bank of India and Others

RESPONDENT

Date of Decision : 05-11-2001

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 41 Rule 1, Order 41 Rule 3, Order 41 Rule 3
Letters Patent Appeal Rules — Rule 13(3)

Citation : (2002) 1 MPHT 295 : (2002) 1 MPJR 100 : (2002) 1 MPLJ 493

Hon'ble Judges : Bhawani Singh, C.J.; K.K. Lahoti, J

Bench : Division Bench

Advocate : Kishore Shrivastava, for the Appellant; V.S. Shrotri, for the Respondent

Final Decision : Allowed

Judgement

Bhawani Singh, C.J.

Appellant has challenged order of Single Judge dated 9-10-2000 passed in W.P. No. 4055 of 2000.

The appeal was filed on 8-11-2001. It was not accompanied by application for condonation of delay. This application was filed on 31-8-2001. When the matter was considered by the Court on 20-8-2001, the appellant sought time for filing additional affidavit in support of the application, which was granted. However, instead of filing additional affidavit, a detailed application seeking condonation of delay in filing the appeal has been filed on 1-9-2001, supported by affidavit. Respondents have filed replies to both the applications.

Shri Kishore Shrivastava, learned counsel appearing for appellant, submitted that he did not file application for condonation of delay along with the appeal because appellant was not required to file certified copy of the order/judgment under Rule XIII (3) of the Letters Patent Rules framed by this Court, effective from June 24, 1994. Precisely, the submission is that under Sub-rule (3), certified copy of the

order/judgment is not required since he availed one of the three options available to him under the Rules. Shri V.S. Shrotri, learned counsel for respondents opposed the submission and contended that this is not true. According to learned counsel, the requirement of filing certified copy of the order is mandatory even if appellant avails any of the three options. We find great substance in the submission. Close and careful reading of the said provision plainly demonstrates that the requirement of filing certified copy of order or judgment or decree is not dispensed with. It has to be filed under any of the three options available to the appellant. Against the first option, he has to file two certified copies with the memorandum of appeal under Clause 10 of Letters Patent. Against the second option, he has to file one certified copy and one photo copy. Against the third option, he has to file two photo copies of the judgment or order or decree appealed from, which means the certified copy thereof. In the last category, the requirement of filing of certified copy is implicit because filing of certified copy against the two former categories is there. Without certified copy, there is no authenticity of the judgment or order or decree appealed from.

We may refer to Order 41 Rule 1 Code of Civil Procedure, providing for appeals from original decrees. Memorandum of appeal has to be accompanied by a copy of decree and of judgment. The rule is inflexible, therefore, imperative. In Order 41 Rule 1, CPC, the word "copy" means certified copy and not an ordinary copy (see the Union of India v. N.M. Anand AIR 1988 Del 271). However, in case appeal is not accompanied by certified copy, Court can allow time to file the same. Appeal filed without the certified copy is incompetent. If a copy of judgment/decreed/order is filed after expiration of the period of limitation prescribed for the appeal, the appeal is time barred because there is no valid appeal until a copy of the judgment/decreed/order is filed. Under Order 41 Rule 1, CPC, filing of certified copy is mandatory and without it, the appeal will be incomplete and memorandum of appeal is returnable to the appellant, or when certified copy is filed, then only question of limitation may be considered.

Under Order 41 Rule 3, CPC, where the memorandum of appeal is not drawn up in the manner provided, it may be rejected or be returned, for the purpose of being amended within the time to be fixed by the Court or be amended there and then. Therefore, under Order 41 Rule 3-A, CPC, where appeal is presented after the expiry of period of limitation specified therefor, it shall be accompanied by an application supported by affidavit setting forth the facts on which the appellant relies to satisfy the Court that he has sufficient cause for not preferring the appeal within such period. Therefore, in effect, there is no appeal before the Court unless the delay is condoned. If the application to excuse delay is filed as a consequence of a direction of the court to cure the defect and when the defect is cured, there is a valid presentation of the appeal and in such a case, the appeal is deemed to have been validly presented on the day it was originally presented.

Adverting to the facts of this case, appellant did not file the memorandum of appeal with certified copy of the impugned judgment. Registry of this Court

raised objection that application for condonation of delay had not been filed since the appeal was time barred. Consequently, M.C.P. No. 422 of 2001 was filed. On 20-8-2001, appellant was allowed to file additional affidavit in support of this application within a week. He filed M.C.P. No. 3450 of 2001 accompanied by affidavit. Narration of facts disclose that appellant had been asked to file application for condonation of delay by the Court. Accordingly, he filed the same and sought condonation of delay in filing the appeal for various grounds with which we are satisfied, the appellant having established sufficient cause for doing so.

Consequently, application is allowed. Delay in filing the appeal is condoned. Even otherwise, the appeal is taken to have been filed on 8-11-2000 when it was presented to the Registry. Applications are disposed of in terms aforesaid.