

(1991) 04 GAU CK 0006
In the Gauhati High Court
Case No : Second Appeal No. 116 of 1983

State of Assam

APPELLANT

Vs

Gobinda Chandra Paul

RESPONDENT

Date of Decision : 05-04-1991

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 20 Rule 7, Order 41 Rule 3A, 100, 96
Limitation Act, 1963 — Section 5

Citation : AIR 1991 Guw 104

Hon'ble Judges : B.P. Saraf, J

Bench : Single Bench

Advocate : K.K. Mahanta, Govt., Assam and N. Sarma, for the Appellant; A.R. Banerjee, for the Respondent

Final Decision : Dismissed

Judgement

B.P. Saraf, J.—The question of law that arises for consideration in this appeal is whether u/s 12(2) of the Limitation Act, 1963 read with the explanation the appellant is entitled to exclude the time commencing from the date of judgment till signing of the decree prior to his application for a copy thereof in computing the period of limitation prescribed for filing the appeal.

2. The appellant State of Assam was a defendant in a suit filed by the plaintiff-respondent in the Court of the Munsiff No. 1, Hailakandi. The suit was for realisation of an amount of Rs. 10,000/- being the value of the goods seized by the Superintendent of Supply, Hailakandi and also compensation for loss and expenditure incurred by him in defending criminal cases instituted against him in respect of the illegal seizure.

3. The case of the plaintiff-respondent, who is a grocer, was that he had a shop and godown wherein he stored 12 bags of Atta, 13 bags of Sugar, 1 bag of Moida (flour) and 5 bags of Suji. On 13-8-73 the defendant, Superintendent of Supply, Hailakandi, in his capacity as an official of the Government, seized the said commodities from the possession of the plaintiff for his alleged failure to display

the chart of prices thereof. A case was instituted against him with the police. The case was investigated by the police and a charge-sheet was submitted u/s 114 (ii) (a) (b) of the Defence of India Rules, 1971. The trial was conducted by the Magistrate which ended in acquittal of the plaintiff on 25-3-74. The value of the seized commodities was also ordered to be returned to him. The State filed an appeal before the High Court against the order of acquittal. The appeal was dismissed and the order of acquittal was upheld.

4. Thereafter, the defendant State of Assam returned only Rs. 3,674.75 on 23-3-80 out of the purchase value of the commodities which was claimed to be Rs. 8910/-. The plaintiff, therefore, filed the suit for recovery of a sum of Rs. 10,000/- being the balance purchase value of the goods seized by the Supply officials, compensation for loss and expenditure incurred in defending himself in the criminal cases. The case was contested by the defendant. On consideration of the evidence and materials adduced by the parties, the learned Munsiff by his judgment dt. 23-12-81 held that the plaintiff was entitled to relief as regards his claim for balance purchase value of the seized commodities including compensation at the rate of 25% of the purchase value, in all amounting to Rs. 7462.75. The claim for reimbursement of expenditure incurred in defending criminal cases was not allowed. The suit was decreed accordingly with proportionate cost.

5. Aggrieved by the aforesaid judgment of the Munsiff, the State of Assam preferred an appeal before the Assistant District Judge No. 1, Silchar. As the appeal was found to be barred by limitation, a notice was served on the respondent-plaintiff who entered appearance through his advocate. The case of the State before the Assistant District Judge was the time taken by the Court to prepare the decree before an application for copy thereof was made should be included as time requisite for obtaining the copy and limitation should be computed accordingly. Reliance was placed on a decision of a single Bench of this Court in Section K. Tangkhul v. W. Tangkhul, reported in AIR 1973 Gau 60. The learned Assistant District Judge, however, observed that the said judgment was not applicable to the facts of the case. The appeal was filed beyond time without any prayer for condonation of delay. The appeal was, therefore, dismissed as being barred by limitation.

6. The State of Assam has come up in appeal before this Court against the aforesaid judgment. The contention of the counsel for the State Shri K.K. Mahanta is that this case is squarely covered by the single Bench decision of this Court in Section K. Tangkhul AIR 1973 Gau 60 (supra). The counsel submits that in view of the explanation to Section 12(2) of the Limitation Act, 1963, the time taken by the Court in preparation of the decree before an application for copy thereof is made, has to be included in the time requisite for obtaining the copy. If that is done, the appeal will be within time.

7. Shri A. R. Banerjee, the learned counsel for the respondent on the other hand, submits that the single Bench decision relied by the appellant is no more a good

law in view of the Division Bench judgment of this Court to the contrary in *Naimuddin Ahmed v. Lokeswar Gogol*, reported in 1972 ALR 8 and a decision of the Supreme Court in *Udayan Chihubhai v. R. C. Bali*, reported in AIR 1977 SC 2319. Counsel contends that in view of the aforesaid judgments, u/s 12(2) read with the explanation a person cannot get exclusion of the period that has elapsed between pronouncement of the judgment and the signing of the decree prior to his application for a copy thereof, and submits that in view of these decisions, the single Bench decision is not binding and no more a good law. Besides referring to the provisions of Section 12(2) of the Limitation Act, 1963, the counsel also referred to Article 116(b) of the Limitation Act, which prescribes the period of limitation for filing an appeal. The period of limitation under the said article, for an appeal to any court other than the High Court from any decree or order, is 30 days from the date of the decree or order. The submission of the learned counsel is that as the date of decree means the date of judgment, for the purpose of appeal time runs from the date of pronouncement of the judgment subject, however, to the provisions of Section 12(2) of the Limitation Act. Counsel also referred to the provisions of Order 20 Rule 6-A of the Civil P.C. which provides for filing of an appeal even without the decree in certain circumstances in support of his contention that the appellant is not entitled to inclusion of the period between the delivery of judgment and preparation of the decree in computation of the time requisite for filing the appeal.

8. Before I proceed to consider the rival submissions, it may be appropriate to mention that in course of hearing of the appeal an application was also filed before me by the appellant State of Assam u/s 5 of the Limitation Act for condonation of the delay in filing the appeal before the lower appellate court. The undisputed position is that no such petition had been filed before the lower appellate court either with the appeal or at a later stage. The lower appellate court, therefore, had no occasion to go into the question whether there was sufficient cause for the delay or not. The present second appeal was filed in this Court in the year 1983 but with this appeal also, no such petition for condonation of delay was made. It is for the first time in course of the hearing of this second appeal by this Court that such a petition has been filed. Before I deal with this petition. I propose to deal with the legal question that arises for consideration whether the appeal before the lower appellate court was barred by limitation or not. The answer to this question will depend upon the interpretation of the explanation to Section 12 of the Limitation Act, 1963. Section 12, so far as relevant, reads :

"12. Exclusion of time in legal proceedings. (1) In computing the period of limitation for any suit, appeal or application, the day from which such period is to be reckoned shall be excluded.

(2) In computing the period of limitation for an appeal or an application for leave to appeal or for revision or for review of a judgment, the day on which the judgment complained of was pronounced and the time requisite for obtaining a

copy of the decree, sentence or order appealed from or sought to be revised or reviewed shall be excluded.

(3) & (4)

EXPLANATION.-- In computing under this Section time requisite for obtaining a copy of a decree or an order, any time taken by the court to prepare the decree or order before an application for a copy thereof is made shall not be excluded."

9. The main plank of the submission of the appellant is the single Bench decision of this Court in Section K. Tangkhul AIR 1973 Gau 60. I have carefully considered the decision of the learned single Judge in the aforesaid case. In that case, the explanation to Section 12 of the Limitation Act, 1963 came up for interpretation. The question that arose for consideration was the same, as in the present case, whether the time taken by the Court to prepare the decree from the date of the judgment till the signing of the decree has to be including in computing the time requisite for obtaining the copy although the application for copy of the decree was made after the decree was signed. The learned single Judge held that what the explanation to Section 12 requires is that for the purpose of computing the time requisite for obtaining a copy of the 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 as time requisite for obtaining the copy. This judgment was delivered at Imphal Bench on 4-3-72. The point at issue in this case, however, had already been decided earlier by a Division Bench of this Court in Naimuddin Ahmcd 1972 ALR 8 (supra). The judgment in that case was delivered on 24-11-1971 wherein it was held that any time taken by the Court to prepare the decree before making of an application for copy of that decree is not to be excluded in computing the limitation. It shall not be included in the time requisite for obtaining the copy. This judgment, it appears, was not before the learned single Judge. Under the circumstances, the judgment in S. K. Tangkhul (supra) which is in direct conflict with the judgment of the Division Bench, came to be delivered. The conflict between these two decisions does not, however, in any way give rise to any problem in deciding the controversy in the present case in view of the well-settled proposition of law that in case of conflict between the decisions of a larger Bench and a smaller Bench, the decision of the larger Bench prevails. The decision in Naimuddin Ahmed 1972 ALR 8 (supra) which is a decision of a Division Bench will prevail over the judgment of the learned single Judge in S.K. Tangkhul AIR 1973 Gau 60 (supra) In that view of the matter, in my opinion, in view of the Division Bench judgment in Naimuddin Ahmed (supra), the decision of the learned single Judge in S. K. Tangkhul v. W. Tangkhul AIR 1973 Gau 60 is not binding and no more a good law. Besides, the law has also been settled now by the decision of the Supreme Court in Udayan Chinubhai AIR 1977 SC 2319(supra).

10. The learned counsel for the appellant submits that even if the decision of the Devision Bench in Naimuddin Ahmed (supra) is binding, it does not apply to the facts of the present case. I have carefully gone through the aforesaid judgment.

It appears that the Division Bench examined exhaustively the provisions of Section 12(2) of the Limitation Act and the Explanation elaborately. The Court also considered the Third Report of the Law Commission of India wherein the cleavage of opinion between different High Courts in regard to the interpretation of old Section 12 of the Limitation Act was noticed and it was observed that the delay of the office in drafting the decree before an application for a copy is made should not count in favour of the party. The introduction of the explanation had, in fact, been suggested by the Law Commission itself in its aforesaid Report. Interpreting the Explanation to Section 12, it was held by this Court in *Naimuddin Ahmed* (1972 Assam LR 8) (supra) (at page 11) :

"Reading Section 12 along with the Explanation, it is clear that time requisite for obtaining a copy of the decree is computed for excluding the same in computing the period of limitation. The Explanation says and makes it clear that the time taken by the court to prepare the decree or order before an application for a copy thereof is made shall not be excluded.....

It is, therefore, manifest that the time taken by the court before an application for a copy of the decree is made shall not be taken into account in calculating the time requisite for obtaining a copy..... the time requisite for obtaining a copy must be after the appellant or the applicant makes an effort by making an application for getting the copy. Hence, giving effect to all the words appearing in the Explanation, the conclusion is irresistible that the time taken by the court to prepare the decree or order prior to the making of the application for a copy cannot be excluded in computing the period of limitation. That is to say, when a party makes an application for copy after signing of the decree, that period will not be covered for the benefit of the appellant as time requisite for obtaining the copy."

11. The aforesaid judgment of the Division Bench was delivered by P.K. Goswami, C. J. (as his Lordship then was).

12. After about five years in 1977, the very same point came up for consideration before the Supreme Court in *Udayan Chinubhai v. R. C. Bali* AIR 1977 SC 2319 . In that case also, similar question based on interpretation of Section 12(2) of the Limitation Act read with the Explanation came up for consideration. The Supreme Court considered the matter at length. It referred to the law as it stood under the old Limitation Act, 1908 as also the cleavage of opinion in the different High Courts with reference to the expression "time requisite for obtaining a copy of the decree." The court also referred to its earlier decision in *Jagat Dhish Bhargava Vs. Jawahar Lal Bhargava and Others*, and in *Lala Bal Mukand (dead) by Lala Balmukund (Dead) through Lrs. Vs. Lajwanti and Others*, where it had approved the majority view of the High Courts under the old law that the period taken in drawing up of the decree would be part of the period requisite for obtaining the copy of the decree. The court in those cases, however, did not express any opinion on the new Section 12(2) of the 1963 Act read with the Explanation. The new Section came up for consideration before the Supreme

Court for the first time in Udayan Chinubhai AIR 1977 SC 2319 (supra) wherein the Supreme Court, on consideration of the Legislative history including the recommendation of the Law Commission contained in its Third Report on the Limitation Act, 1909 and the statement of objects and reasons for introducing the Bill in the Parliament, observed (at page 2323) :

"Relying on the new Section 12(2) read with the Explanation of the 1963 Act, it is not possible to accept the submission that in computing the time requisite for obtaining the copy of a decree by an application for copy made after preparation of the decree the time that elapsed between the pronouncement of the judgment and the signing of the decree should be excluded. The Explanation does not countenance such a construction of Section 12(2). It is to set at rest the difference of views amongst the High Courts that the Explanation was introduced and it is not permissible now to allow the same controversy to be perpetuated even after the 1963 Act."

13. It was further observed (at page 2326):

"Computation of limitation is predominantly the governing factor in Section 12(2). In order to enable a correct computation of the period of limitation u/s 12(2) with certitude, when it is provided, therein, that certain time has to be excluded, it is then clearly provided, at the same time, in the Explanation that a particular period of time shall not be excluded. As if the Section and the Explanation say : You are permitted to exclude the time requisite for obtaining a copy but in computing that time, which is requisite and which is allowed for exclusion u/s 12(2), you shall not exclude, while computing the period of limitation, the time that had elapsed from the date of judgment to the date of your application for a copy. The objects seems clearly to be not to give premium to unmerited idleness and indifference of litigants in making application for copy."

14. The discussion was summed up by the Supreme Court in the following words (at page 2327) :

"The correct legal position, therefore, is that u/s 12(2) read with the Explanation a person cannot get exclusion of the period that elapsed between pronouncement of the judgment and the signing of the decree if he made the application for a copy only after preparation of the decree."

15. Incidentally, the aforesaid judgment of the Supreme Court was also delivered by P.K. Goswami J. (as his Lordship then was) who had delivered the judgment of the Division Bench of this Court in Naimuddin Ahmed 1972 ALR 8 (supra).

16. In view of the clear pronouncement of the Supreme Court and this Court, the interpretation of Section 12(2) read with the Explanation cannot be a subject matter of further judicial controversy. It is now well settled that u/s 12(2) of the Limitation Act, 1963 read with the Explanation, the appellant is not entitled to exclude the time that had elapsed from the date of the judgment till signing of the decree prior to his application for a copy thereof in computing the period of

limitation prescribed by for filing the appeal.

17. The facts of this case may now be examined in the light of the law stated above, for that purpose, it is expedient to note the relevant dates. The judgment of the trial Court was delivered on 23-12-81. The decree was signed on 19-1-82. Application for certified copy was made on 7-1-82. The requisites were notified on 19-1-82 and the same were supplied on 22-1-82. Certified copy was ready on 1-2-82 and the appeal was filed on 23-2-82. In computing the period of limitation, the lower appellate court excluded the time requisite for obtaining the copy from the date of the application that is 7-1-82. Evidently, there was a time lag between the date of judgment and the date of preparation of the decree. The time taken in preparation of the decree after the application for copy was filed was taken into account in calculating the time requisite for obtaining the copy. However, the time taken by the Court before the application for a copy of the decree was made was not taken into account. If that time is also taken into account in computing the time requisite for obtaining the copy, the appeal will not be barred by limitation. Otherwise, the undisputed position is that it was barred. In view of the well-settled legal position emerging from the foregoing discussion, it is clear that such time cannot be taken into account in calculating the time requisite for obtaining the copy. The appeal is, therefore, barred by limitation.

18. In view of the foregoing discussion it is not necessary to deal exhaustively the submission of the counsel for the appellant based on Order 20, Rule 6A. This provision was inserted by the 1976 amendment of the Civil P.C. to provide in the event of delay in preparation of the decree for filing of appeal even without decree but on certificate in terms of Sub-rule (2) containing a statement to the effect that the decree has not been drawn up and also the reasons for the delay. In cases falling under Order 20, Rule 6A appeal will be maintainable even without decree. On careful consideration of the provisions of Order 20, Rule 6A, its scheme and object, I am of the opinion that it has no relevance for determination of the controversy in the present case. On the other hand, Rule 7 of Order 20 which provides that the decree shall bear date and day on which the judgment was pronounced clearly goes to show that the decree comes into existence as soon as the judgment is pronounced and not on the day when it is signed and sealed later. In other words, the date of the decree means not the date when it is reduced in writing and signed but the date on which the judgment is actually delivered and for the purpose of appeal, time runs from the date of pronouncement of the judgment.

19. I may now turn to the petition u/s 5 of the Limitation Act for condonation of delay in filing the appeal before the lower appellate court which has been filed by the appellant before this court in course of hearing of this Second Appeal. The submission of the counsel for the appellant is that the delay was caused due to bona fide impression that limitation runs from the date of signing of the decree and not from the date of signing of the judgment. According to the learned

counsel in that view of the matter the delay should be condoned. Mr. A.R. Banerjee, learned counsel for the respondent, on the other hand, vehemently opposed even the filing of the petition u/s 5 of the Limitation Act for the first time before this Court in the second appeal. His submission is that the application for condonation of delay should have been filed along with the appeal before the lower appellate court. In this connection reliance is placed on the provision of Order 41, Rule 3A of the Civil P.C. The submission of the learned counsel in effect, is that the provisions of Section 5 of the Limitation Act cannot be applied by the High Court hearing a second appeal when there was no application for condonation of delay before the lower appellate court. In the alternative, it is submitted that the cause shown is not sufficient to justify condonation of delay.

20. I have carefully considered the rival submission in regard to exercise of power u/s 5 of the Limitation Act. Before dealing with them, it may be expedient to set out Order 41, Rule 3A, C.P.C.

"3-A. Application for condonation of delay.-

(1) When an appeal is presented after the expiry of the 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 had sufficient cause for not preferring the appeal within such period.

(2) If the Court sees no reason to reject the application without the issue of a notice to the respondent notice hereof shall be issued to the respondent and the matter shall be finally decided by the Court before it proceeds to deal with the appeal under Rule 11 or Rule 13, as the case may be.

(3) Where an application has been made under Sub-rule (1) the Court shall not make an order for the stay of execution of the decree against which the appeal is proposed to be filed so long as the Court does not, after hearing under Rule 11, decide to hear the appeal."

21. This Rule was inserted by the Civil Procedure Amendment Act of 1976. It provides for filing of application for condonation of delay along with the appeal. The object of this provision is to secure at the admission stage the final determination of the question of limitation. Sub-rule (3) even prohibits the court from granting any ad interim stay of execution of decree unless after hearing the parties, it admits the appeal. From a careful consideration of the scheme of this rule, it appears that this rule is not mandatory its requirements are directory. Besides, this rule is not in derogation of Section 5 of the Limitation Act. In fact, it is in addition to that. It has, therefore, to be read along with the said provision. So read, it is clear that despite this provision, application for condonation of delay may be filed even after the filing of the appeal. In that view of the matter. I do not find force in the submission of the counsel for the respondent that no petition for condonation of delay could have been filed even before the lower appellate court after the filing the appeal.

22. The next important point that arises for determination is whether the provisions of Section 5 of the Limitation Act can be applied by the High Court in a second appeal on the face of the fact that no application under the said Section had been filed before the lower appellate court. I have carefully considered this aspect of the matter. I am of the opinion that when no application for condonation of delay in filing the appeal was filed in the lower appellate court, the High Court in second appeal cannot apply the provisions of Section 5 of the Limitation Act to condone the delay.

23. Even on merits, in the instant case, on perusal of the cause shown in the petition u/s 5 of the Limitation Act for condonation of delay, it appears that the only ground on which the delay is sought to be condoned is bona fide mistake on the part of the counsel of the appellant in regard to the date from which the limitation runs. It is stated that the counsel for the appellant was under the bona fide impression that the limitation runs from the date of signing of the decree and not from the date of signing of the judgment. I am not impressed by the cause shown. The law is abundantly clear that "the date of the decree" means "the date of the judgment." The explanation to Section 12(2) is also clear and unambiguous and controversy, if any, in regard to its interpretation, had been set at rest by the Division Bench of this court as back as in the year 1971 and by the Supreme Court in the year 1977. No particulars have been furnished about the counsel and the opinion given by him except making a vague and general statement about the bona fide erroneous impression of the counsel. As observed in *Harsha Ltd. v. Collector of Customs* (1989) 41 ELT 8 (SC), in a case where such a plea is taken for condonation of delay, it should be shown that the party concerned sought the advice of competent counsel and such advice was given exercising reasonable skill and care after proper examination and due care and caution. Vague and general statement in this regard does not constitute sufficient cause for condoning the delay.

24. The law in regard to condonation of delay is clear. If on a justice-oriented approach the court finds that there is sufficient cause for the delay, it should condone it otherwise not. As observed by this court in *State of Assam v. Anil Chandra Das* (1990) 1 GLR 183

"In construing Section 5 of the Limitation Act the Court has to keep in mind two important considerations, first is that the very purpose of providing a period of limitation for challenging any order by way of appeal, revision etc. is to give finality to all legal proceedings on the expiry of specified time and to set at rest all judicial controversies in a particular matter. On the expiration of the period of limitation, a right is created in favour of a decree-holder to treat the decree or an award as binding. The other consideration is that the delay might have been caused due to reasons beyond the control of the appellant or, in other words, there may be "sufficient cause" for the delay and refusal to condone it might result in grave injustice. The Court has to strike a balance between the two equally important considerations. What is, therefore, necessary is to consider

whether there was any gross negligence, deliberate inaction or lack of bona fide on the part of the appellant Proof of "sufficient cause" therefore, is a condition precedent for exercise of the discretionary power of the Court to condone the delay."

25. In the instant case, the suit was filed in the year 1981. The relief sought for was a decree for Rs. 10,000/- on account of the value of goods illegally seized by the officials of the Government and compensation etc. The suit was decreed on 23-12-81 for Rs. 7462.75. The State filed an appeal after expiry of the period of limitation. No petition u/s 5 of the Limitation Act was filed before the lower appellate court along with the appeal, nor it was filed during the hearing of the appeal. The appeal was dismissed as barred by limitation. The question of sufficient cause for condonation of delay, under the circumstances, did not arise for consideration before the lower appellate court. This second appeal was filed before this court challenging the legality of the order of the lower appellate court. This court, in course of hearing, observed that the order of the lower appellate court holding the appeal as barred by limitation appeared to be correct and in accordance with law. At that stage, a petition was filed for condonation of the delay. As already stated, the cause shown is wrong impression of the counsel in regard to the correct legal position in the matter of computation of limitation. On consideration of the facts and circumstances of the case, I am not satisfied that the cause shown is sufficient to justify condonation of the delay. The statement made in regard to the wrong legal advice is vague and bereft of requisite particulars. Such statement cannot constitute sufficient cause within the meaning of Section 5 of the Limitation Act. Besides by condoning the delay at this stage the litigation for a sum of Rs. 7642.75, which has attained finality will be reopened and the plaintiff will be forced to fight another round of legal battle after lapse of long ten years. This will cause grave injustice to the plaintiff. It will retard the cause of justice instead of furthering it. In that view of the matter, even on merits, taking a justice-oriented approach, I am of the opinion that there is no sufficient cause to justify condonation of delay.

26. In the light of the foregoing discussion, I do not find any merit in this appeal and the same is therefore dismissed. Under the facts and circumstances of the case, I make no order as to cost.