

(1982) 07 SHI CK 0016

In the High Court Of Himachal Pradesh

Case No : Civil Revision Petition No. 67 of 1982

State of Himachal Pradesh

APPELLANT

Vs

Kirpa Ram and Another

RESPONDENT

Date of Decision : 26-07-1982

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 39 Rule 1, Order 39 Rule 2, Order 43 Rule 1
Evidence Act, 1872 — Section 76
Limitation Act, 1963 — Section 12

Citation : (1982) ShimLC 325

Hon'ble Judges : V.P. Gupta, J

Bench : Single Bench

Advocate : M.L. Chauhan, Law Officer, for the Appellant; G.D. Verma, for the Respondent

Final Decision : Dismissed

Judgement

V.P. Gupta, J.—This revision petition is directed against the order, dated 19th December, 1981 passed by the Additional District Judge, Simla, by which the appeal of the present Petitioners (Defendants) was dismissed as time barred.

2. The facts are that on 25th June, 1980 the Respondents (Plaintiffs) filed a suit for permanent prohibitory injunction against the Petitioners (Defendants) in the court of Senior Sub-Judge, Simla. Along with the suit the Respondents also filed an application under Order XXXIX Rules 1 and 2 of the CPC for grant of temporary injunction.

3. The Senior Sub-Judge vide order, dated 27th June, 1980 granted an ad interim injunction. The application for temporary injunction was finally allowed on 31st July, 1980 by the Senior Sub-Judge, Simla, and the ad interim injunction granted on 27th June, 1980 was made absolute till the disposal of the suit.

4. The Petitioners feeling aggrieved from this order filed an appeal in the court of District Judge, Simla. The District Judge, Simla vide his order, dated 31st March,

1981 entrusted the appeal to the Additional District Judge, Simla for disposal. Before the Additional District Judge the Respondents raised an objection that the appeal was time-barred. On this objection of the Respondents the Additional District Judge recorded the evidence of the parties and finally vide order, dated 19th December, 1981 dismissed the appeal of the Petitioners as time-barred.

5. In this revision petition, Shri M.L. Chauhan appearing on behalf of the Petitioners contended that the appeal in the Court of District Judge was within time and that the order of the Additional District Judge is wrong. He referred to the various dates given in the certified copy of the order dated 31st July, 1980 which was attached alongwith the appeal in the court of District Judge.

6. Shri G.D. Verma, the learned Counsel appearing on behalf of he Respondents contended that the application for a copy had been given by the Petitioner on 4th August, 1980 and that the copy was prepared on 12th August, 1980. The learned Counsel contended that the Petitioners had been asked to collect the copy on 18th August, 1980, by the Copying Agency Department, but they took the delivery on 21st August, 1980. On these grounds it was contended that the delay in taking the delivery of the copy was due to the negligence of the Petitioners themselves and no period beyond 18th August, 1980 could be allowed to the Petitioners.

7. I have considered the contentions of the learned Counsel for the parties and have seen the records of the courts below.

8. The order by the Senior Sub-Judge on application under Order XXXIX Rules 1 and 2 of the CPC was passed on 31st July, 1980. This order is an appealable order under Order XLIII Rule 1(r) of the Code of Civil Procedure.

9. Under Order XLIII Rule 2 of the Code of Civil Procedure, the rules of Order XLI of the CPC shall apply, so far as may be, to appeals from orders. Under Order XLI of the CPC the memorandum of an appeal is to be presented alongwith copy of the order appealed from. Hence, it was necessary for the Petitioners to have filed the copy of the order, dated 31st July, 1980 alongwith the memorandum of appeal before the District Judge.

10. Section 12 of the Limitation Act reads as follows:

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

(2) In computing the period of limitation for 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) Where a decree or order is appealed from or sought to be revised, or

reviewed or where an application is made for leave to appeal from a decree or order the time requisite for obtaining a copy of the judgment on which the decree or order is founded shall also be excluded.

(4) xx xxExplanation xx xx

11. The Petitioners while computing the period of limitation were, therefore, entitled to exclude the time requisite for obtaining the copy of the order, dated 31st July, 1980.

12. The question to be decided therefore is as to what was the time requisite which the Petitioners could exclude in computing the period of limitation.

13. In the certified copy filed by the Petitioners with the appeal, it is mentioned that the Petitioners filed an application No. 2411 for obtaining the copy on 4-8-1980. In column No. 9 of the endorsement by the Copying Agency it is mentioned that the copy was prepared on 12-8-1980. In column No. 12 it is mentioned that the copy was delivered to the Petitioners on 21-8-1980. The copy was certified to be a true copy by the Examiner on 21-8-1980. This certificate was u/s 76 of the Indian Evidence Act.

14. It is not disputed that only a certified copy can be attached with the appeal. According to the learned Counsel for the Petitioners time from 4-8-1980 to 21-8-1980 (both days inclusive) is to be excluded for computing the period of limitation, while according to the learned Counsel for the Respondent time from 4-8-1980 to 18-8-1980 (the date which was given to the Petitioners for obtaining the copy) is to be excluded.

15. In the facts and circumstances of the present case, I am unable to accept the contention of the learned Counsel for the Respondents.

16. The Petitioners were within their right to exclude the time spent in obtaining the requisite copy, which was to be filed with the appeal. Even if the copy was prepared on 12-8-1980 by the Copyist, still it was not possible for the Petitioners to obtain copy on any date prior to 21-8-1980. It was only on 21-8-1980 that the copy was certified to be a true copy by the Examiner u/s 76 of the Indian Evidence Act. In these circumstances the Petitioners could only obtain a certified copy on or after 21-8-1980. The position might have been different if the copy had been certified to be a true copy on any date between 12-8-1980 to 18-8-1980, but that is not the position in the present case.

17. There are also Copying Agency Rules and relevant rules read as follows:

1.31 Examiner to revise and attest copies.- In the case of applications for attested copies no copy shall be delivered to any person until it has been examined, certified, stamped and paged. The Examiner shall see that the provisions of the law and these rules and orders have been complied with in all respects.

1.32 Duties of Examiner.- Every Examiner, shall before he attests any copy in the

manner prescribed by these rules:

(a) personally compare such copy with the original record from which it has been made. For the purpose of facilitating the comparison of any copy, the copyist who made it may be called upon to assist by reading out the original:

(b) attest every alteration made in such copy by initialling the same:

(c) examine and initial the endorsements made upon the copy in accordance with these rules:

(d) examine the headings and form of the copy, and see that they are in accordance with the law, rules and directions applying to such copy:

(e) see that the instructions in Rule 22 have been fully complied with:

(f) see that the court-fee stamps (sic) to copies are punched, cancelled and initialled:

(g) made an entry in register C.D. 5 as to the out-turn of the copyist-see Rule 47:

1.33. Endorsement on copies to be made by the Examiner.- When any copy is found to be in all respects correct and ready for delivery to the applicant, the Examiner shall endorse thereon the following words:

Certified to be a true copy.

and shall sign and date the endorsement, and subscribe his official designation, below which he shall endorse the following words:

Authorised by Section 76 of the Indian Evidence Act, 1872.

He shall then cause the proper seal to be affixed to the copy. If the copy covers more than one sheet of paper the Examiner shall endorse the word "attested" on every such sheet, and shall enter his initials and the date thereunder.

A reading of these rules shows that when an application for attested copy is made to the Copying Agency then the copy can only be delivered to the person (applicant) after it is duly certified to be a true copy.

18. In view of the above discussion it is crystal clear that it was not possible for the Petitioners to obtain a certified copy from the Copying Agency on any date prior to 21-8-1980, because the endorsement regarding certification is made by the Examiner on 21-8-1980 and in this manner the attested copy could be deemed to be ready for delivery on 21-8-1980 or thereafter but not earlier. The Petitioners took delivery of the copy on 21-8-1980 and they were thus entitled to exclude the time from 4-8-1980 to 21-8-1980 for computing the period of limitation in filing the appeal. The appeal before the District Judge was therefore within time.

19. The Additional District Judge has acted in exercise of his jurisdiction illegally and with material irregularity in dismissing the appeal of the Petitioner.

20. As a result of the above discussion the present revision petition is accepted and the order of the Additional District Judge, dated 19th December, 1981 dismissing the appeal of the Petitioners as time barred is set aside.

21. The records of the case be sent to the Additional District Judge Simla who will now decide the appeal on merits. The parties are directed to appear in the court of Additional District Judge, Simla on 7th August 1982.