

(1969) 11 MAD CK 0031

In the Madras High Court

Case No : C.M.P. No's. 13533 to 13535, 13539, 13540, 13542 and 13543 of 1967 in Appeal S.R. No's. 30085, 30089, 30097, 30105, 30109, 30113 and 30125 of 1966

State of Madras

APPELLANT

Vs

Muthurethinam and Others

RESPONDENT

Date of Decision : 17-11-1969

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 41 Rule 1
Limitation Act, 1908 — Section 12(2)

Citation : AIR 1970 Mad 353 : (1970) ILR (Mad) 1 : (1970) 83 LW 424

Hon'ble Judges : K. Veeraswami, C.J.;Somasundaram, J;Natesan, J

Bench : Full Bench

Advocate : G. Ramaswami, Addl. Govt. Pleader, for the Appellant; N. Sivamani, P.S. Srisailam and N.K. Ramaswami, for the Respondent

Judgement

Ramamurti, J.—In a batch of Land Acquisition cases, a common judgment was delivered by the trial Court. The State of Madras obtained

12 printed copies of judgment and filed an appeal which (for the sake of convenience) may be referred to as the main appeal. In the other appeals,

the memorandum of appeal was accompanied only by a copy of the relevant decree along with a petition to dispense with the production of

printed copies of judgment on the ground that in the main appeal, 12 printed copies had been filed. Along with this, a petition has also been filed, in

each of these appeals, to excuse the delay, if any, in filing the appeals as they would be barred by limitation if the time taken for obtaining certified

copies of the relevant decrees alone is taken into account u/s 12 of the Limitation Act, hereinafter referred to as the Act.

2. In all cases, where a common judgment is delivered disposing of a batch of

cases, the practice of this court has been to dispense with the production of the printed copies of the judgment in the rest of the appeals provided in one appeal the requisite number of printed copies of the common judgment are filed. Following this practice, (we?) dispense with the production of the copies of the printed judgment in the present batch of appeals.

3. Mr. Sivamani, learned counsel for the respondent drew our attention to the decision of Byers J. in *The Commissioner of Income Tax Vs. K.C.*

Manavikrama Rajah of Calicut (deceased) Legal, representative of Sri P.C. Veerarayan alias Kuttunni Raja the Zamorin Rajah of Calicut, in which

the learned Judge after comparing the language of Order XLI, Rule 1, C.P.C. and Order XLI-A, Rule 2, Sub-rule (i), C.P.C., held that in the case

of appeals to the High Court, it has no power to dispense with the production of the copies of the judgment. Our attention was also drawn to the

decision of Chandrasekhara Aiyar J. in *In Re: Rayalla Ramappa and Others*, in which the learned Judge differing from Byers J. held that the High

Court has such a power. With respect we agree with the decision of Chandrasekhara Aiyar J. A reading of all the provisions of Order XLI-A

dealing with appeals to the High Court from the subordinate courts shows that the provisions of Order XLI would undoubtedly apply to appeals in

the High Court subject only to the modifications contained in Order XLI-A, The provisions of Order XLI-A have to be necessarily read into and

applied along with the provisions of Order XLI and the provisions of Order XLI-A would prevail only to the limited extent to which there is a

special provision. In other words, the procedural law governing appeals to the High Court is the combined operation of Order XLI and Order

XLI-A the latter Order prevailing only to the limited extent of a different specific provision. The provisions of Order XLI-A cannot be applied in

isolation. So far as the requirement of production of the copy of the judgment is concerned, in the case of an appeal to the High Court, a

memorandum should be accompanied by printed copies and they should be twelve in number. It is only to this extent that there is a variation and in

other respects, the provision in Order XLI would apply and this court will have undoubted jurisdiction to dispense with the production of the

copies of judgment in a proper case.

4. If a Sub-Court or a District Court has jurisdiction and power to dispense with the production of a copy of the judgment in an appeal preferred

to it, we do not find any reason why the High Court should be denied such a power, in the case of an appeal preferred to the High Court. The

provision for dispensing with is specially provided in Order XLI, Rule 1 only because of the clear necessity felt for such a provision, as otherwise,

serious hardship and injustice would arise. In innumerable cases, the appellant may not be in a position to file the copy of the judgment and unless

such a power is reserved to Subordinate Courts, the right of appeal itself would become illusory and futile. It is obvious that the position must be

the same with regard to appeals preferred to the High Court and there is no basis to make any distinction between the two sets of appeals. That,

this is the only correct view, also follows from the provisions of Order XLII governing procedure in the case of second appeals. Order XLII

contains only one rule to the effect that the rules of Order XLI and Order XLI-A shall apply so far as may be to appeals to the High Court from

appellate decrees. There cannot be any doubt that in the case of a second appeal, the High Court will have power to dispense with the production

of judgment. The Madras Amendment consists of three rules. Order XLII, Rules 1, 2 and 3. Order XLII, Rule 1 states that Orders XLI and XLI-

A shall apply to second appeals to the High Court We are not prepared to accept any interpretation which will involve this anomaly, that the High

Court will have power in the case of second appeals, to dispense with production of copies of judgment and no such power in the case of first

appeals. We do not find anything either in the scheme or the language of the provisions of Order XLI-A to deny the High Court such a power

which is so vital and necessary. For all these reasons and following the uniform practice of this court, the production of the copies of judgment is

dispensed with in this batch of appeals.

5. The question next arises whether there is any delay in filing these appeals; this point is linked up with the question whether the appellants are

entitled to the exclusion of time taken for obtaining the printed copies of the judgment which have been filed in the main appeal. (After referring to

the relevant case law, His Lordship put up the papers before his Lordship the Chief Justice for malting reference to a Full Bench.)

ORDER

K. Veeraswami, C.J.

12. The question we are called upon to answer is whether the benefit of exclusion of time u/s 12(2) of the Indian Limitation Act. 1908 is available

to each of the appeals, which are all directed by the same appellant against, a common judgment disposing of together certain connected land

acquisition references, or, to only one of the appeals in which alone certified copies of the judgment and decree were filed along with the related

memorandum of appeal. The common judgment of the court below was dated 2-12-1965 and an application for a copy thereof and of the decree

was made on 6-12-1965. The copies of the judgment and decree were delivered to the appellant on 15-4-1966 and the appeals were filed on 4-

7-1966.

13. There is no dispute that so far as the appeal in which the copies of the judgment and decree were filed is concerned, it was in time, having

regard to the time to be excluded in furnishing the copies. We may mention that certified copies of the decree were filed in each of the appeals, but,

applications were filed to dispense with production of copies of the judgment in the appeals except in the main one in which, as we said, they had

been produced. These applications have since been allowed. On the assumption that these appeals, except the main one, were out of time,

applications also were taken out for excusing the delay in filing them. Evidently this procedure was followed because of *State of Madras Vs.*

Mohammad Sirajudeen, which was decided by two of us constituting a Division Bench. Venkataraman and Ramamurti JJ. before whom the

applications went up for disposal, being of the view that *State of Madras Vs. Mohammad Sirajudeen*, required reconsideration they have referred

the matter to a Full Bench for an authoritative decision on the point, to wit, whether in the appeals arising from a common judgment disposing of a

batch of suits a party will be entitled to exclusion of time u/s 12 of the Limitation Act in respect of all the appeals, though he had obtained only one

set of copies of judgment.

14. *State of Madras Vs. Mohammad Sirajudeen*, expressed the view that the time for preferring an appeal should be calculated on the

endorsements on the copies of judgment produced in each of the appeals, even if

they were filed in a batch and in one of them such copies were produced and in the rest their production was dispensed with. At the same time it was felt in that case that delay, in such cases might, however, be excused in the circumstances. The correctness of this view has been examined by us and we are of opinion that, on a proper construction of Section 12(2) and (3) and of the principles evolved by some of the decided cases relevant to the question, the view in *State of Madras Vs. Mohammad Sirajudeen*, does require modification.

15. Section 3 of the Limitation Act directs that any appeal preferred after expiry of the period of limitation prescribed therefore by the First

Schedule should be dismissed. Part III contains the procedure for computation of the period of limitation, and Section 12 allows exclusion of time

in the computation. In computing time the day from which the period is to be reckoned has to be excluded. Sub-section (2), which is in point here,

is:

In computing the period of limitation prescribed for an appeal, an application for leave to appeal and an application of a review of 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 reviewed, shall be excluded"".

The next sub-section says that where a decree is appealed from or sought to be reviewed, the time requisite for obtaining a copy of the judgment,

on which it is founded, shall also be excluded. On a Careful reading of these provisions it is evident that they are not in any way qualified or limited

in their application by anything outside these provisions. The direction by those provisions is that in computing time for purposes of exclusion the

day on which the judgment appealed against was pronounced and the time required for obtaining a copy of the decree as well as of the judgment

should be taken into account for exclusion. The provisions are silent as to who should apply for such copies or whether they should at all be filed

along with the appeals. But Order XLI, Rule 1 C.P.C., as in force in this State, requires that every memorandum of appeal should be accompanied

by a copy of the decree appealed from and also a copy of the judgment. This requisite, except as to the decree, is not an inflexible rule, as the

court has the power to dispense with the production of copies of the judgment.

This provision of the Code, however, is obviously unrelated to Section 12 of the Limitation Act, and cannot be understood, in our view, as enjoining that exclusion for computation of time for limitation for an appeal should only be based on the endorsements in the certified copies of the judgment necessarily to be filed therewith. Order XLI, Rule 1 C. P. Code is limited to the procedure in filing an appeal and is concerned with the form of the memorandum of appeal and the enclosures thereto. That rule has nothing to do with the exclusion of time which is entirely dependent on Section 12 of the Limitation Act The result of this view of the scope of Section 12 of the Limitation Act and Order XLI, Rule 1 is that there is no interdependence or connection between them so that whether or not an appellant is entitled to exclusion of time will not depend upon any requisition for filing of copies of judgment and decree in an appeal, though of course, exclusion of time has to be determined in the light of the endorsements on the certified copy of the judgment or the decree, or both, as the case may be, as to the time taken in supplying them.

16. Where, therefore, several appeals arise from a common judgment and they have been filed by the same party, there is nothing to prevent him, from relying on a copy of the judgment or decree, or both, filed in only one of them, for exclusion of time in computing limitation for each of such appeals. For that purpose the party concerned is not required by Section 12(2) to file copies of the judgment and decree along with the memoranda of any of the appeals. That requisite, as we said, flows not from the provisions of the Limitation Act but from the procedure prescribed by Order XLI, Rule 1 C.P.C. The idea in allowing exclusion of time for computation of limitation is to allow the party concerned time to consider whether he is called upon to file an appeal. If that is borne in mind, we do not see why a copy of the judgment and decree filed in one of the appeals cannot be made use of for purposes of getting exclusion of time in the other connected appeals filed along with it simultaneously by the same party. If in such appeals it is shown with reference to the endorsements on the copies of the judgments and decrees that by the exclusion of time warranted by them the appeals are in time, the requirement of the Limitation Act is satisfied. On that view no question of limitation will, therefore, arise in the appeals. Dispensation of production of copies of the

judgments is called for only because of Order XLI, Rule 1 C.P.C.

17. The view we have just expressed, which is based on a reading of Section 12, is also, as it seems to us, in consonance with the decided cases.

Jijibhoy Surty v. T.S. Chettiar AIR 1928 PC 103 though not concerned with appeals from a common judgment, laid down, on a construction of

Section 12(2) of the Limitation Act, that this section was not qualified by the CPC or any other Act, but contained an independent direction for

exclusion of time. The Privy Council there rejected a contention that because no enclosure was required by the procedural rules to be filed of

copies of the judgment and decree along with a memorandum of appeal, it followed that limitation should be computed without exclusion of time

taken for obtaining those copies. Dealing with that question, the Board observed:--

Their Lordships have now to return to the grammatical construction of the Act, and they find plain words directing that the time requisite for

obtaining the two documents is to be excluded from computation. Section 12 makes no reference to the CPC or to any other Act. It does not say

why the time is to be excluded, but simply enacts it as a positive direction.

The object of the exclusion, said the Privy Council, was that counsel or the party should have time to decide with reference to a copy of the decree

and judgment whether it was necessary to file an appeal.

18. The view of the Privy Council that Section 12(2) of the Limitation Act operates irrespective of the CPC has been approved by the Supreme

Court in Addl. Collector of Customs, Calcutta and Another Vs. Best and Co., . This is what the Supreme Court stated:

As the Privy Council has laid down the provisions of Section 12(2) and (3) are a positive direction excluding the time taken for obtaining a copy

of the judgment and decree or. order as the case may be and those provisions are irrespective of the CPC or the rules made by a court u/s 122 of

the Code.

We are aware that neither of these two cases related to appeals from a common judgment, but, all the same, the principle is well established by

them that exclusion of time u/s 12(2) of the Limitation Act has no relevance and is not in any way related to the requirement of filing copies of

judgments and decrees along with the memoranda of appeals.

19. Bibi UmtuI Rasul v. Ramcharan, AIR 1920 Pat 535 is directly in point here as it was concerned with the case of several appeals filed by the

same party against a common judgment. The Patna High Court held that where more appeals than one were presented by the same appellant from

the same judgment but with only one certified copy of the judgment enclosed with one of the appeals, they should all be held to be in time if the one

with the enclosures was found to be in time. In support of this view, the court relied on its own practice, but, obviously, this practice is certainly in

consonance with the law. The Patna High Court pointed out:

In such a case the time requisite for obtaining a copy of the judgment would be excluded u/s 12(3) in computing the period of limitation in respect

of all the appeals filed by the appellant, although only one copy of the judgment is filed for all the appeals.

State of Madras Vs. Mohammad Sirajudeen, had but followed an earlier Bench decision in Avudaiammal v. Ganapatht, AIR 1915 Mad 493 (2).

Sadasiva Aiyar and Tyabji JJ. in AIR 1915 Mad 493 (2), were of the view that an appellant was not entitled to a deduction of the time taken in

obtaining copies of judgments filed in another connected appeal. The basis for this view was the consideration that the requirement of Order XLI,

Rule 1 was related to the application of Section 12(2) and (3) of the Limitation Act. Sadasiva Aiyar J. expressed his opinion thus:

Order XLI, Rule 1 C.P.C. requires the appeal memorandum to be accompanied by a copy of the judgment unless the appellate Court dispenses

therewith. No such dispensation was given and hence there was an irregular presentment of the appeal on 27-7-1910 to the District Court.

Assuming however that the presentation of the copy of the judgment was dispensed with by the appellate Court the appeal was presented long out

of time. The appellant could not claim the deduction of any period as required for obtaining copy of the judgment, as no time could be required or

could have been spent in obtaining copy of the judgment when such copy was dispensed with.

The time spent in obtaining a copy of the same judgment for purposes of filing a different appeal in another suit (though it was a connected suit

disposed of with the present suit by a single judgment) cannot legally be excluded in computing the period of limitation for filing this appeal.

Tyabji J. concurred in that view. But, with respect, we may point out that no attempt was made in that case to determine the true scope and effect

of Section 12(2) and (3); in fact, no reference was even made in the judgment to the section. As the Privy Council pointed out in AIR 1928 PC

103, the learned judges lost sight of the true position that exclusion of time for purposes of limitation was not in any way controlled or affected by

the requirements in the CPC of filing of certified copies of judgment and or decree with the memoranda of connected appeals from a common

judgment.

20. In the course of the argument before us the discussion was widened to the proposition that once a certified copy of the judgment and decree

furnished the basis for exclusion u/s 12(2) and (3), it would enure to the benefit of not merely the appellant who had secured them but also to other

parties to the judgment appealed against, whether or not they filed appeals together or separately on the same day or different dates. Having

regard to the limited scope of the reference before us, in the light of the facts, we do not think it necessary to cover that area and express our view.

It will suffice to say that *Aminuddin Sahib v. Pyari Bi*, ILR Mad 633 : AIR 1920 Mad 159 (2)) and *Ramkishan Shastari v. Kashibai*, ILR(1907)

All 265 do not, as we are inclined to think, contribute to such a proposition. In the first of these cases all that was held was that an appellant who

was required to file with his memorandum of appeal a copy of the decree appealed from, might file a copy obtained by another party and that u/s

12(2) of the Limitation Act, he was entitled to a deduction of the time taken to obtain that copy. In ILR (1907) All 264 it was held that the words

"the time requisite for obtaining a copy" in Section 12(2) and (3) were not confined to cases where the person appealing had in person or by a

properly authorised agent applied for a copy of the judgment or decree. But that is not the question under our consideration.

21. We are of the view, in these cases, that the common appellant having filed a copy of the judgment in one of the connected appeals and filed

copies of decrees in each of all the appeals, the benefit of exclusion, on the basis of the endorsements, of the time taken in furnishing the certified

copy of the judgment would not merely be available to the appeal in which the certified copy of the judgment was filed but would enure also to the

other connected appeals-filed by the same party against the common judgment. Accordingly, we hold that the appeals were all within time and that on that view, the petitions for excusing the delay are unnecessary. They are, therefore, dismissed. No costs.