

(2014) 10 KL CK 0370
In the High Court Of Kerala
Case No : Z.M.A.C.A. No. 80 of 2011

Sunitha

APPELLANT

Vs

Ranju and Others

RESPONDENT

Date of Decision : 16-10-2014

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 41 Rule 1, Order 41 Rule 41, 96
Criminal Procedure Code, 1973 (CrPC) — Section 363, 363(1), 367, 382, 419
Evidence Act, 1872 — Section 74, 76, 77, 79
Family Courts Act, 1984 — Section 19, 19(1), 20, 21
Hindu Marriage Act, 1955 — Section 20, 21, 23(4)
Limitation Act, 1963 — Section 12, 12(2), 12(3), 28
Motor Vehicles Act, 1988 — Section 140, 162, 165, 166, 166

Citation : (2015) 3 ALLMR 15 : (2015) 1 ILR 120

Hon'ble Judges : T.R. Ramachandran Nair, J;P.V. Asha, J;A.V. Ramakrishna Pillai, J

Bench : Full Bench

Advocate : Cibi Thomas, Advocates for the Appellant

Judgement

P.V. Asha, J.—Whether an appeal filed under Section 173 of the Motor Vehicles Act, 1988 (hereinafter referred to as "the Act") should be accompanied by a certified copy of the award/judgment or whether it is sufficient to file the free copy issued under Section 168(2) of the Act, is the question referred to the Full Bench.

2. In the judgment reported in Habeeb v. Sebastian, T.C. I.L.R. 2010 (4) Kerala 940, a Division Bench of this Court, after elaborately considering the various provisions in the Motor Vehicles Act, Kerala Motor Vehicles Rules and Civil Rules of Practice directed that all appeals preferred under Section 173 of the Act after 1-1-2011 shall be accompanied by a certified copy of the award and that appeals accompanied by free copy of the award shall not be entertained after 1-1-2011.

3. Another Division Bench in its order dated 8-7-2011 in an unnumbered MACA of 2011 Unnumbered MACA 2011, found that the free copy of the award is the

statutory right of the claimant and therefore such free copy issued must be held to be sufficient for all purposes including filing of appeal and disagreed with the directives issued in *Habeeb v. Sebastian* (supra). This Division Bench was of the view that new generation enactments like Motor Vehicles Act, the Family Courts Act, etc., do recognize the right of a person to receive free copy of the decision rendered in the litigation in which he is a party and that at least in respect of such statutes which recognize such a right of the party to receive a free copy, such free copy should be held to be sufficient for all purposes, and therefore the Tribunals which are constituted to render rough and ready justice to the parties should be liberated from the shackles of unnecessary procedural niceties. The matter is referred to the Full Bench under these circumstances.

4. In this context, an analysis of the various provisions relating to the passing of award and the procedural formalities in filing an appeal under the Act is necessary.

5. Section 168 of the Act provides that on receipt of a claim for compensation, the Claims Tribunal shall, hold an enquiry into the claim, with notice and opportunity of hearing to the parties including insurer and may make an award determining the amount of compensation which appears to it to be just and specifying the person or persons to whom compensation shall be paid and specifying the amount which shall be paid by the insurer or owner or driver involved in the accident. Section 168(1) and (2) of the Act are as follows:

"168. Award of the Claims Tribunal.--(1) On receipt of an application for compensation made under Section 166, the Claims Tribunal shall, after giving notice of the application to the insurer and after giving the parties (including the insurer) an opportunity of being heard, hold an inquiry into the claim or, as the case may be, each of the claims and, subject to the provisions of Section 162 may make an award determining the amount of compensation which appears to it to be just and specifying the person or persons to whom compensation shall be paid and in making the award the Claims Tribunal shall specify the amount which shall be paid by the insurer or owner or driver of the vehicle involved in the accident or by all or any of them, as the case may be:

Provided that where such application makes a claim for compensation under Section 140 in respect of the death or permanent disablement of any person, such claim and any other claim (whether made in such application or otherwise) for compensation in respect of such death or permanent disablement shall be disposed of in accordance with the provisions of Chapter X.

(2) The Claims Tribunal shall arrange to deliver copies of the award to the parties concerned expeditiously and in any case within a period of fifteen days from the date of the award."

6. Section 173 of the Act provides that any person aggrieved by an award of the Claims Tribunal may within 90 days from the date of the award prefer an appeal to the High Court. Section 173 of the Act reads as follows:

"173. Appeals.--(1) Subject to the provisions of sub-section (2), any person aggrieved by an award of a Claims Tribunal may, within ninety days from the date of the award, prefer an appeal to the High Court."

Section 176 of the Act enables the State Government to make rules for various purposes mentioned therein including the form and manner in which an appeal may be preferred against an award of the Claims Tribunal. Section 176 reads as follows:

"176. Power of State Government to make rules.--A State Government may make rules for the purpose of carrying into effect the provisions of Sections 165 to 174, and in particular, such rules may provide for all or any of the following matters, namely:

- (a) the form of application for claims for compensation and the particulars it may contain, and the fees, if any, to be paid in respect of such applications;
- (b) the procedure to be followed by a Claims Tribunal in holding an inquiry under this Chapter;
- (c) the powers vested in a Civil Court which may be exercised by a Claims Tribunal;
- (d) the form and the manner in which and the fees (if any) on payment of which an appeal may be preferred against an award of a Claims Tribunal; and
- (e) any other matter which is to be, or may be, prescribed."

In exercise of the powers conferred under various provisions including Section 176 of the Act, Government of Kerala has issued the Kerala Motor Vehicle Rules, 1989 (hereinafter referred to as "the Rules"). Chapter X thereof consisting of Rules 371-398A deals with the powers of the Claims Tribunal, procedure to be followed for adjudicating the claims, passing of award, the appellate remedy, fees prescribed, etc., Rule 396 of the Rules provides for appeal against the decision of the claims Tribunal which reads as follows:

"396. Appeal against the decision of Claims Tribunal.--(1) An appeal against the award of a Claims Tribunal shall be preferred in the form of a memorandum stating concisely the grounds on which appeal is preferred.

(2) It shall be accompanied by a copy of the judgment, the award appealed against, and the fee prescribed in sub rule (3) of Rule 397.

* * * *

7. Thus it can be seen that the memoranda of appeal against the award of the Claims Tribunal has to be accompanied by a copy of the judgment, the award appealed against as well as the fees prescribed.

8. In this context it is necessary to have a look at Rule 392 of the Rules which provides for judgment as well as award by the Tribunal. This Rule provides that

the Claims Tribunal in passing orders, shall record concisely in a judgment, the findings on each of the issues framed and the reasons for such findings and make an award specifying the amount of compensation to be paid by the insurer, or the owner in case where the vehicle is not insured and also the person or persons to whom compensation shall be paid. Sub Rule 3 provides that the Claims Tribunal shall furnish copies of the judgment to the Secretary of the Regional Transport Authority, the registering authority and the licensing authority concerned for taking necessary action. Sub Rule 4 provides that the record of judgment, in respect of claims exceeding Rs. 5000, shall contain the evidence which shall either be verbatim or a reasonably complete and full memoranda of testimony explaining the basis of compensation, the findings on each such evidence and the reasons for such findings before making an award specifying the amount of compensation. Rule 392 reads as follows:

"392. Judgment and award of compensation.--(1) The Claims Tribunal in passing orders, shall record concisely in a judgment, the findings on each of the issues framed and the reasons for such findings and make an award specifying the amount of compensation to be paid by the insurer, or the owner in the case of vehicles which are not insured and also the person or persons to whom compensation shall be paid.

(2) Where compensation is awarded to two or more persons the Claims Tribunal shall also specify the amount payable to each of them.

(3) The Claims Tribunal shall furnish copies of the judgment as required to be recorded under sub-rule (1) to the Secretary of the Regional Transport Authority, the registering authority and the licensing authority concerned for taking such action as the authorities consider necessary against the drivers, conductors or owners or the vehicle involved in the accident.

(4) Notwithstanding anything contained in sub rules (1) and (2) the record of judgment shall, in respect of claims exceeding five thousand rupees, contain the evidence which shall either be verbatim or a reasonably complete and full memoranda of testimony explaining the basis of compensation, the findings on each such evidence and the reasons for such findings, before making an award specifying the amount of compensation."

9. The procedure for filing an appeal is provided in Rule 396, as mentioned above. Rule 397 provides for the fees to be remitted while filing the claim for compensation and for filing appeal. Rule 398 provides that the rules relating to issue of certified copies obtaining in the Civil Rules of Practice, Kerala shall mutatis mutandis apply in the case of Claims Tribunal, which reads as follows:

"398. Certified copies.--The rules relating to the issue of certified copies obtaining in the Civil Rules of Practice, Kerala shall mutatis mutandis apply in the case of Claims Tribunal.

* * * *"

10. The procedure for issuing certified copies is provided in Chapter VII of the Civil Rules of Practice, Kerala. Rule 239(1) provides that any person entitled to obtain a copy of any proceeding or document filed in or in the custody of the Court, shall present an application thereof as in Form Number 47 setting out the name of the applicant, his position in the suit or proceeding if he is a party thereto, and the description of the document of which copy is required. Provisions in Rule 239 relevant for the purpose of this case reads as follows:

239. Application for copies.--(1) Any person entitled to obtain a copy of any proceeding or document filed in or in the custody of the Court, may present an application therefore as in Form No. 47 setting out the name of the applicant, his position in the suit or proceeding if he is a party thereto, and the description of the document of which copy is required.

* * * *

(3) Any party to the proceeding may, immediately after the judgment or order is pronounced, apply orally to the Court for a carbon copy or photostat copy thereof, and, if the court so directs, a carbon copy or photostat copy duly certified shall be issued to the party on his making an application for an urgent copy under Rule 246 accompanied by the copying charges required by Rule 248: Provided that in cases where the State Government or the Central Government is a party, a carbon copy may be issued to the State Government or the Central Government, as the case may be, by the office free of cost, on receipt of a written requisition for the same.]

* * * *

11. Sub rule 3 of Rule 239 of Civil Rules of Practice provides for issuance of carbon copy, in case a party to the proceedings orally applies to the court for the same immediately after the pronouncement of the judgment or order and if the court so directs and immediately thereupon that party submits an application for an urgent copy thereof under Rule 246 and remits the requisite court fee/charges as provided in Rule 248. Rule 242 provides that a list of applications in which records are received and the number of stamp papers required shall be published in the notice board everyday and such list shall remain suspended for 3 clear working days and that the applicant shall supply the stamp paper called for, within the time fixed, failing which application shall be struck off. Rule 244 provides that the date for appearance of the applicant to receive the copy shall be notified on the notice board. Rule 247 provides that the copies notified in the notice board, shall be taken delivery within three clear days. Rule 248 provides for copying charges to be supplied in the shape of stamp papers/court fee stamp affixed in foolscap paper. Rule 250 provides for production of stamp papers; Rule 253 provides that all copies furnished by the court shall be certified to be true copy by the officer appointed for the purpose and shall be sealed with the seal of the court. Rule 254 further provides that every copy shall bear an endorsement by showing the following particulars: Rules 253 and 254 read as follows:

"253. Sealing and certificate.--All copies furnished by the Court shall be certified to be true copies by the officer appointed for the purpose and shall be sealed with the seal of the Court.

254. Endorsement of copies.--Every copy shall bear an endorsement initialled by the 21 [Fair Copy Superintendent or the Examiner, as the case may be], showing the following particulars:

1. Name of the Court.
2. Year and number of the suit or other proceeding.
3. Name of the applicant.
4. Number and date of the application.
5. Date of calling for stamp papers.
6. Date of production of papers.
7. Date of calling for additional papers.
8. Date of production of additional papers.
9. Date when copy was ready.
10. Date notified for appearance to receive the copy.
11. Date when copy was delivered."

12. Thus on a reading of the provisions contained in Chapter VII of the Civil Rules of Practice, Kerala, it can be seen that all copies furnished by the court shall be certified to be true copy and shall bear the seal of the court and such copies shall have the endorsement relating to the name of the court, year and number of the suit/other proceedings, name of applicant, number and date of application, date of calling for stamp papers, date of production of stamp paper, date of calling for additional papers, date of production of additional papers, date when it was ready, date notified for appearance to receive the copy and the date when copy was delivered.

13. The carbon copy of a proceedings envisaged under sub rule 3 of Rule 239 is to be issued on the basis of an application by the party to the court immediately after pronouncement of judgment/order and when the court issues a direction in terms of such application and the party makes an application for urgent copy under Rule 246 and remits the copying charges. Rule 246 provides for preparation of all copies of documents applied for in accordance with the serial order of the applications and Rule 247 provides for delivery of copies, after publication of the list where copy is ready for delivery in the notice board. Rule 248 provides for copying charges to be called for and supplied in the shape of court fee stamps/stamp papers at the rate of one rupee for every 175 words. Rule 250 provides that the person producing stamp papers for copies shall make

an endorsement on the copy application showing the number of stamp papers produced, and the examiner of copies shall initial the same in token of receipt.

14. In this context the provisions contained in Rules 41 and 42 of Kerala High Court Rules, 1971, are also relevant, which read as follows:

41. Papers to be filed with memoranda of appeals.--Every memorandum of appeal shall be accompanied by as many clear authenticated copies thereof as there are respondents to be served and by two additional copies for the use of the Court, by such papers as are referred to in the Code with regard to appeals, by the fees prescribed for service of notice on the respondents and by the particulars for service as set out in Form No. 3:

* * * *

42. Appeals barred by limitation.--Every Memorandum of Appeal or other proceeding which is presented after the expiration of the time limited by law, shall be accompanied by a petition to excuse the delay and as many copies thereof as there are respondents to be served and by two additional copies for the use of the Court, by the fees prescribed for service of notice of the petition on the respondents and by the particulars for service as in Form No. 3.

Under Rule 5(5) of the High Court Rules "Code" means Civil Procedure Code, 1908 or Criminal Procedure Code, 1898, as the case may be. The appeals against the award of the Motor Accident Claims Tribunal are to be filed as per Rule 396 of the Kerala Motor Vehicle Rules which mandates that a copy of the award shall accompany the memoranda of appeal, exactly as in the case of an appeal under Order XLI, Rule 1 of Civil Procedure Code which reads as follows:

1. Form of appeal. What to accompany memorandum.--(1) Every appeal shall be preferred in the form of a memorandum signed by the appellant or his pleader and presented to the Court or to such officer as it appoints in this behalf. The memorandum shall be accompanied by a copy of the judgment:

Provided that where two or more suits have been tried together and a common judgment has been delivered therefor and two or more appeals are filed against any decree covered by that judgment, whether by the same appellant or by different appellants, the Appellate Court may dispense with the filing of more than one copy of the judgment.

On a combined reading of the provisions in Chapter X of the Kerala Motor Vehicle Rules, 1989 and the relevant provision in the Motor Vehicles Act, 1988, it can be seen that the appeal memorandum should be accompanied by a copy of the judgment and going by the provisions in Civil Rules of Practice and Kerala High Court Rules and Civil Procedure Code mentioned above, a copy of award which should accompany the appeal memoranda should be understood as a certified copy. A carbon copy which is issued in terms of an application made to the Judge immediately after pronouncement of the judgment, followed by the permission of the Judge and filing of application for urgent copy along with requisite fee will

also be authenticated though it may not contain all the requisite details as to the date of application, date of calling stamp papers, furnishing stamp papers and delivery of the copy, etc. At the same time, under Rule 253 of the Rules, all copies furnished by the court shall be certified to be true copy by the officer appointed for that purpose and shall be sealed with the seal of the court, with the endorsement as provided in Rules 2 to 4.

15. The learned counsel appearing for the appellant argued that the copy referred to in Rule 396 should be the free copy being sent to the party under Section 368(2) of the Motor Vehicles Act and that it is not necessary to produce the certified copy of the judgment/award. In support of his contentions he relied on the judgment reported in *Shyamala Kumari v. Vijay Lakshmi Amma* 2011 (1) K.L.T. 9 rendered by another Division Bench. In that case, the issue considered was whether an appeal under Section 18 of the Rent Control Act should be accompanied by a certified copy of the impugned order/judgment. In that case the party had filed an appeal on the basis of the carbon copy issued to him under Rule 239(3) of the Civil Rules of Practice, based on which an interim order staying execution proceedings was granted. The court found that for all practical purposes the carbon copy issued to the tenant in this case on the basis of an oral request followed by an application submitted immediately after the order was passed by the Rent Control Court for the specific purpose of preferring an appeal is as good as any other certified copy on the basis of which the appeal could have been preferred. The issue considered therein was with respect to the date to be reckoned for the purpose of calculating the limitation period. This Court found that the distinction seen between carbon copies and regular certified copies is that the table of fees prepared on the basis of cost statements given to the court by the party will be available only in the regular certified copies. In this case the original tenant was issued with a carbon copy for the purpose of preparing an appeal and accordingly he preferred the appeal. In such circumstances, this Court found that the question of limitation is to be answered on the basis of the carbon copy and not on the basis of the certified copy subsequently produced. This Court came to such a conclusion, relying on the Single Bench judgment of this Court in *Tatha v. Paru* reported in 1985 K.L.T. 1069 and *Joint Agricultural Marketing Advisor v. Baby* reported in 1982 K.L.T. 850 wherein it was held that for all practical purposes including for the purpose of preferring appeal, carbon copy is as good as a regular certified copy and that carbon copies issued under Rule 239(3) are copies duly certified by the court and enjoys the presumption under section 79 of the Evidence Act regarding the genuineness of the copy as a copy of the original. This Court arrived at that finding, after distinguishing the judgment *Chuppan Nadar Shanmukhan Nadar Vs. Sreedharan Thampi*, , wherein it was held that an aggrieved party need file an appeal only on the basis of the certified copy or printed copy obtained by him and not on the basis of the copy of operative portion of the judgment. It was a case where an appeal filed on the basis of the certified copy of the judgment was objected by the opposite party on the ground of delay saying that period of

limitation should be reckoned from the date on which the appellant had obtained the certified copy of the last paragraph of the judgment.

16. But we find that the copy issued under section 168(2) of the Act cannot be equated to the one issued under Rule 239(3) of the Civil Rules of Practice, as the latter would have all the endorsements required to be made in a certified copy. In this case the award is dated 23-12-2010. The free copy which is produced along with this appeal bears the seal of the Tribunal on the 1st page of the award. There is an endorsement on the last page that it is a true copy/true photocopy with signature dated 27-5-2011 of the Head Clerk. It does not contain any further details, apparently because no such endorsements are required in the case of free copy and on account of this, it is not feasible to calculate the period of limitation for the purpose of filing an appeal. It is also pertinent to note that the free copy itself is issued after about 5 months of the award, while Section 168(2) provides that it shall be issued within a maximum period of 15 days from the date of the award.

17. The learned counsel relied on the judgment *Joint Agricultural Marketing Advisor v. Baby* 1982 K.L.T. 850 wherein a Division Bench of this Court, after considering the provisions in Rule 128 of the High Court Rules, found that the carbon copy issued under Rule 128(2) based on oral application of the party to the court immediately after the pronouncement of judgment, followed by the direction of the court should be a carbon copy duly certified and therefore such a carbon copy issued by the court is also a duly certified copy. This Court found that the idea behind the issuance of the carbon copy as well as certified copy is that the party should get time from the date he comes to know of the order and the period lost in applying the earlier is counted and the period after receipt of the copy up to the date of filing the appeal, is also reckoned for the purpose of reckoning the period of limitation. In those circumstances, it was held that the carbon copy issued to a party duly certified by the court would be sufficient for the purpose of filing the appeal and time should be reckoned with reference to such carbon copy if such a carbon copy is received earlier than a certified copy. Therefore it can be seen that the carbon copy referred to and discussed in that case was the one issued under Rule 128(2) of the Kerala High Court Rules, [which is in pari materia with R. 239(3) of Civil Rules of Practice] which requires to be certified whereas it is not necessary in the case of a copy being issued under section 168(2) of the Act.

18. The learned counsel further relied on the judgment in *Thatha v. Paru* reported in 1985 K.L.T. 1069, wherein it was held that the carbon copy produced along with the appeal can be treated as a certified copy of the order, if it contains the necessary particulars by which its authenticity can be inferred and as such presentation of the appeal with such carbon copy can be treated as a valid presentation. In that case this Court found that all the particulars except for the certification were available in the carbon copy, including the seal of the court. It was also observed that there Section 76 of Evidence Act did not prescribe any

form for certified copy; the pre-requisite is that it should be authenticated and should contain all the particulars from date of application till date of delivery of the copy; therefore such carbon copies issued on directions from the court, if filed along with appeal memorandum, should be entertained.

19. The learned counsel relied on the judgment *Smt. Kaveri Roy and another v. Bhagmat Tudu and another* of the High Court of Jharghand reported in 2005 (3) T.A.C. 395 wherein it was found that the certified copies of the judgment being issued by the Tribunals did not contain the details of the parties, valuation or costs awarded and therefore directions were issued to include such details while issuing the judgments. We do not find there anything which supports the contention of the appellant herein.

20. The learned counsel brought to our notice, the judgment of Orissa High Court in *Oriental Insurance Company Ltd. v. Geetha Pareek & others* 2009 (3) T.A.C. 933 (Ori.) wherein, after referring to the relevant provisions in Orissa Motor Vehicles Rules relating to filing of appeal, it was held that it is the certified copy of the award/judgment that is to be produced along with the memorandum of appeal and not the copy being issued under section 168(2) of the Act. The learned Single Judge considered the judgments in *Jagat Dhish Bhargava Vs. Jawahar Lal Bhargava and Others*, and *Shakuntala Devi Jain Vs. Kuntal Kumari and Others*, wherein it was held that decree and judgment are public documents under section 77 of the Evidence Act and only certified copy can be produced in proof of their contents and that memorandum of appeal is not validly represented unless it is accompanied by certified copies of the decree and judgment. We are in full agreement with the view taken by the Orissa High Court that such certified copies shall be produced in proof of the contents of the public documents nevertheless in view of the fact that the copy which is being produced should have evidentiary value.

21. The issue relating to requirement of certified copy is seen considered by the Hon"ble Supreme Court and this Court in several cases including the following.

22. The apex court in *The State of Uttar Pradesh Vs. C. Tobit and Others*, considered the requirement of certified copy for filing an appeal under section 419 of the Code of Criminal Procedure, which reads as follows:

"419. Every appeal shall be made in the form of a petition in writing presented by the appellant or his pleader, and every such petition shall (unless the court to which it is presented otherwise directs) be accompanied by a copy of the judgment or order appealed against, and, in cases tried by a jury, a copy of the heads of the charge recorded under section 367."

The sole question raised in this appeal is whether this section requires a petition of appeal to be accompanied by a certified copy of the judgment or order appealed from. The larger Bench (4 JJ) observed as follows:

A "copy" may be a plain copy i.e. an unofficial copy or a certified copy i.e. an

official copy. If a certified copy of the judgment is annexed to the petition of appeal nobody can say that the requirements of Section 419 have not been complied with, for a certified copy is nonetheless a "copy". That being the position a question of construction does arise as to whether the word "copy" used in Section 419 refers to a plain copy or to a certified copy or covers both varieties of copy. It is well-settled that "the words of a statute, when there is doubt about their meaning, are to be understood in the sense in which they best harmonise with the subject of the enactment and the object which the Legislature has in view. Their meaning is found not so much in a strictly grammatical or etymological propriety of language, nor even in its popular use, as in the subject or in the occasion on which they are used, and the object to be attained". (Maxwell's Interpretation of Statutes, 10th Edn. p. 52). In order, therefore, to come to a decision as to the true meaning of a word used in a Statute one has to enquire as to the subject-matter of the enactment and the object which the legislature had in view. This leads us to a consideration of some of the relevant sections of the Code of Criminal Procedure and other enactments having a material bearing on the question before us. * * *

After considering various provisions in the Criminal Procedure Code and Limitation Act and purpose and object lying behind the provisions for appeal, it was held that:

"It will suffice for us to hold that so far as Section 419 is concerned, having regard to the context and the purpose of that section, the copy to be filed along with the petition of appeal must be a certified copy."

23. In *Shakuntala Devi Jain Vs. Kuntal Kumari and Others*, the Hon^{ble} Supreme Court considered a case where an appeal was filed on 1st March 1967, along with a plain copy of the order in a partition suit, saying that the certified copy of the order was not ready, though application was filed for the same. The certified copy was filed only on 6th November 1967, after the opposite parties filed objection on 25th October 1967. On December 22, 1967 the High Court held that as the memorandum of appeal was not accompanied by a certified copy of the order, the appeal was incompetent, and that there was no sufficient ground for condoning the delay in filing the copy. In para 2 of the judgment the Hon^{ble} Supreme Court found as follows:

"Section 96 of the Code Order XLI, Rule 1 of the Code provides that every appeal shall be preferred in the form of a memorandum signed by the appellant or his pleader "and the memorandum shall be accompanied by a copy of the decree appealed from and (unless the appellate court dispenses therewith) of the judgment on which it is founded". Under Order XLI, Rule 1 the appellate court can dispense with the filing of the copy of the judgment but it has no power to dispense with the filing of the copy of the decree. A decree and a judgment are public documents and under section 77 of the Evidence Act only a certified copy may be produced in proof of their contents. The memorandum of appeals is not validly presented, unless it is accompanied by certified copies of the decree and

the judgment."

It was held therein that the memorandum of appeal should have been accompanied by a certified copy of the order and in the absence of the requisite copy the appeal was defective and incompetent. However, in view of the circumstances of that case where the appellant was bona fide prosecuting her attempts to get certified copy, it was found that the application filed for condoning delay in filing the certified copy should have been allowed.

24. In the judgment P.A. Oommen Vs. Moran Mar Baselius Marthoma, , the apex court was considering the question whether the certified copy applied for and obtained by a party in one of the cases can be accepted in appeals by others and whether they are entitled to the benefit under the proviso to Order XLI, Rule 1 of Civil Procedure Code, under the proviso to Order XLI, Rule 1 where two or more suits have been tried together and a common judgment has been delivered therefore and two or more appeals are filed against any decree covered by that judgment, whether by the same appellant or by different appellants, the appellate Court may dispense with the filing of more than one copy of the judgment. The High Court took the view that the plaintiffs/appellants cannot take advantage of the certified copy of the judgment obtained by another person. And hence in calculating the period of limitation the Court can reckon time only on the basis of the certified copy of the judgment and decree produced in the case. The following observations made by the apex court in that judgment is relevant in the context of the case before us.

"As for the printed copy of the judgment filed with the memorandum of appeal it does not contain the necessary particulars regarding the person who made the application, the date of application, the date of issue, the date notified for receiving the same as required in Rules 253 and 254 of the Civil Rules of Practice in order to entitle the appellants to claim extension of time under Section 12(3) of the Limitation Act. Confronted with this difficulty, the appellant and other plaintiffs in O.S. No. 105 of 1980 sought to rely on the proviso to Order XLI, Rule 1 C.P.C. and to get the advantage of the time taken by the plaintiffs in O.S. No. 21 of 1979 in obtaining the certified copy of the common judgment. We are clearly of the view that there is no justification nor any basis for claiming such benefit and the High Court rightly dismissed the C.M.P. No. 32544 of 1983."

25. In Jayrajan v. Sabitha 2011 (4) K.L.T. 262, a Division Bench of this Court after considering the provisions in Family Courts Act, 1984 and the provisions contained in the Family Courts (Procedure) Rules, 1989, held that an appeal under Section 19 of the Family Courts Act need be accompanied by the copy of the judgment which is certified to be the true copy by the Court which passed the judgment and that the copy of the judgment need not be one certified in terms of R. 253 or 254 of Civil Rules of Practice. Sub-section 3 of Section 19 of the Family Courts Act provides that every appeal under this section from the judgments of Family Court shall be preferred within a period of 30 days from the date of the judgment or order of a Family Court. Rule 13 Family Court

(Procedure) Rules, 1989 provides that every appeal under Section 19(1) of the act shall be accompanied by a copy certified to be true copy by the court which passed the judgment. On an analysis of the provisions contained in the Family Courts Act and the rules framed thereunder, this court found that the provisions of the Family Courts Act have overriding effect over any other law, as provided under Section 20 and that Family Court (Procedure) Rules are framed by the High Court in exercise of its powers vested by Section 21 and going by the Rule 11 of Procedure Rules, the free copy to be furnished to the parties free of cost is sufficient for filing appeals under the Act. Rule 10 of the Procedure Rules provides that a copy of every judgment/order against which an appeal lies under Section 19 of the Act shall be given free of cost to the parties. Sub rule (ii) thereof provides that at the top of the first page of the judgment or order there shall be an endorsement to the effect that an appeal can be preferred to the High Court of Kerala within a period of 30 days from the date of judgment/orders. This court found that the Procedure Rules having been issued in exercise of the statutory power contained in S. 21 of the Act, would get the protection of S. 20 and would, therefore, have overriding effect over Civil Rules of Practice to the extent of inconsistency and therefore Rules 253 and 254 of therein would not apply to the copies issued by the Family Court. This court noticed that the copy produced along the appeal was certified to be a true copy by the Sheristadar, who is, the chief ministerial officer of the court that passed the judgment and hence there was due certification.

26. But the copy being issued under Section 168(2) does not contain the particulars required. There is no procedure rules which even indicates that the certified copy is not required. On the other hand under Rule 398 of the Rules the provisions in Civil Rules of Practice are made applicable to the proceedings under the Act and Rules, unlike in the case of the Family Court Procedure Rules.

27. In *Ouso v. Cheekku* reported in (2007 (1) K.L.T. 61), a learned Single Judge of this court considered the issue regarding certified copy in a revision petition filed by an accused along with a free copy. It was found that Rule 240 of the Criminal Rules of Practice applies only to certified copies and not to "free copy" issued under S. 363(1) of the Code of Criminal Procedure, as Chapter XX of the Criminal Rules of Practice in which Rule 240 occurs is named "certified copies" whereas Rule 240 says "copy" only. Sub-s. (1) of Section 363 provides for the issue of a copy of the judgment to the accused free of cost immediately after pronouncement of the judgment. Sub-s. (2) of S. 363 provides for issue of a certified copy on the application of the accused. The certified copy to be issued under sub-s. (2) is also free of cost, in case, the judgment is appealable by the accused. The proviso to sub-s. (2) states that where a sentence of death is passed or confirmed by the High Court, a certified copy of the judgment shall be immediately given to the accused free of cost whether or not he applies for the same. Rule 109 of the Criminal Rules of Practice states that the appellate court shall, when it confirms or awards a sentence of imprisonment, furnish a copy of its judgment to the accused free of cost. Section 382 of the Code of Criminal

Procedure provides that every appeal shall be made in the form of a petition in writing and shall be accompanied by a copy of the judgment or order appealed against. Section 382 does not mandate that the appeal shall be accompanied by a certified copy of the judgment. But Rule 102 of the Criminal Rules of Practice provides that every memorandum of appeal or Revision Petition shall be accompanied by a certified copy of the judgment or order of the court. It was found therein that a "free copy" issued under S. 363(1) is also a certified copy, since it is issued under seal of the court and is certified as a true copy. This Court found that Rules 241 and 242 of the Civil Rules of Practice shall be followed, *mutatis mutandis*, in the case of a copy to be issued under S. 363 of the Code of Criminal Procedure as well, if copy is not given to the accused immediately after pronouncement of the judgment as provided in S. 363(1) of the Code of Criminal Procedure. It further found that absence of the necessary endorsements on the copy of the judgment makes it practically impossible to compute the period of limitation.

28. In *Yesoda v. Narayanan* reported in 1985 K.L.T. 540 (F.B.), the Full Bench of this Court was considering the issue whether the appellant is entitled to exclude the time taken to obtain a certified copy of the decree of the lower court, for filing appeal under the Marriage Act. Under Section 21 of the Marriage Act, all proceedings under the Act, shall be regulated, by the Code of Civil Procedure. Under Order XLI of the Code the memorandum of appeal has to be accompanied by a copy of the decree. It was found that if, in an appeal, under the Code, Section 12 of the Limitation Act will apply, the same result is achieved in an appeal under the Marriage Act, as well, in view of the legislative scheme adopted in Section 28 of the Act making the decree "appealable as decrees of the court made in the exercise of original jurisdiction. It was found that by long usage the term "certified copy" has obtained a special meaning in view of the provision in Section 76 of the Evidence Act; and that term, when used in connection with an appeal and with reference to the order against which the appeal is filed, has always been understood as the copy which the party preferring the appeal obtains under Section 76 of the Evidence Act on payment of the necessary fee. It was held that Section 23(4) of the Hindu Marriage Act only enables the applicant to obtain a copy free of cost; but does not statutorily prescribe the time during which the copy has to be delivered; S. 23(4) does not advance the contention of the appellant that the time required to obtain the certified copy cannot be excluded. S. 23(4) does not advance the contention of the appellant that the time required to obtain the certified copy cannot be excluded.

29. In the case before us the Rules only provide for a copy of the award/judgment to be accompanied with the memorandum of appeal. The nature of the copy is not specified in the Rules. But going by Section 74 of the Indian Evidence Act, 1872, documents forming the acts, records of the acts of official bodies and Tribunals are public documents. Section 76 provides for the procedure to be followed in issuing a certified copy, which forms the duty of every public officer having the custody of a public document to issue the same, as and when there is

a demand for the same on payment of fees. As per Section 77 of the Evidence Act the contents of public documents can be proved on production of certified copies of the same. Therefore, when the Rules provide that the memorandum of appeal should be accompanied by a copy of the award/judgment, such copy of judgment referred to therein should be a certified copy. Section 76 of the Indian Evidence Act reads as follows:

"76. Certified copies of public documents.--Every public officer having the custody of a public document, which any person has a right to inspect, shall give that person on demand a copy of it on payment of the legal fees therefor, together with a certificate written at the foot of such copy that it is a true copy of such document or part thereof, as the case may be, and such certificate shall be dated and subscribed by such officer with his name and his official title, and shall be sealed, whenever such officer is authorized by law to make use of a seal; and such copies so certified shall be called certified copies.

Explanation.--Any officer who, by the ordinary course of official duty, is authorized to deliver such copies, shall be deemed to have the custody of such documents within the meaning of this section.

In the present case the statute does not require that the copy being sent to the party under Section 168(2) should be authenticated."

Even if it bears the seal of the Tribunal, it would not bear the details as required in Rule 254 of the Civil Rules of Practice. For the purpose of calculating the period of limitation for filing appeal, these particulars are essential. Under Section 12(2) of the Limitation Act, the period between date of application and date of receipt of certified copy of the award is liable to be reckoned for calculating the period of Limitation. Relevant portion of Section 12 reads as follows:

12. Exclusion of time in legal proceedings.--(1) * * *

(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.

30. It is pertinent to note that the copy of the award which is required to be delivered by the Tribunal under Section 168(2) does not insist for any of the details to be endorsed on it. There is a specific provision for filing appeal i.e., Section 173 of the Act, the procedure for which is provided in Chapter X of the Rules, according to which the provisions in Civil Rules of Practice are applicable mutatis mutandis. When there is a specific provision, which makes the provisions in Civil Rules of Practice applicable, we are of the view that it is a certified copy of the award/judgment which should accompany the appeal memorandum and the word "copy" appearing in Rule 396 of the Rules is to be read and understood as certified copy, in terms of the provisions contained in Civil Rules of Practice,

which is also made applicable. We do not find any reason to interpret the provision in Section 168(2) to mean that an appeal under Section 173 can be filed along with the copy of the award to be sent by the Tribunal to the party dehors the provisions in Civil Rules of Practice, which is specifically made applicable to the proceedings in the Tribunal as well as the appellate court, which may or may not contain the authentication, the details of date of application, date of calling stamp, date of delivery etc.

31. Therefore we find that it will be in the interests of all the parties to a claim, especially the claimants that the copy of the award, which should be filed along with the appeal as envisaged in Rule 396 of the Rules should be authenticated and should contain the particulars Nos. 1 to 11 specified in Rule 254 of the Civil Rules of Practice and therefore the free copy under Section 168(2) cannot be accepted in substitute of the certified copy. We find that issuing of copy of the judgment or award by the court under Section 168(2) is not for the purpose of filing an appeal and such an interpretation will not be in any way beneficial to the parties, as the period of limitation runs from the date of receipt of the copy. Therefore we do not find it necessary to withdraw the directives contained in the judgment reported in *Habeeb v. Sebastian* (supra).

The reference is answered accordingly.

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