

(1956) 03 AHC CK 0024
In the Allahabad High Court
Case No : Special Appeal No. 316 of 1955

The State of U.P. and Another	Vs	APPELLANT
Mahendra Pratap Pitamah and Others		RESPONDENT

Date of Decision : 08-03-1956

Acts Referred:

Allahabad High Court Rules, 1952 — Rule 5, 6
Constitution of India, 1950 — Article 226
Limitation Act, 1908 — Section 12(2)

Citation : AIR 1956 All 585 : (1956) 26 AWR 358

Hon'ble Judges : Brij Mohan Lall, J; Beg, J

Bench : Division Bench

Advocate : Gyana Prakash, for the Respondent

Final Decision : Disposed Of

Judgement

Brij Mohan Lall, J.—This is a special appeal by the State Government and the Director of Elections against a decision of a learned single Judge of this Court quashing under Article 226 of the Constitution the election of the Chairman and members of the Town Area of Kerakat. The judgment appealed against was delivered on 22-4-1955. A decree was prepared by the office.

An application for a copy of the decree was made on 13-5-1955. The copy was ready for de-livery on 22-8-1955. The delivery was actually taken by the appellant on 24-8-1955. The memorandum of appeal was presented on 23-9-1955. The question that has arisen before us is whether the memorandum of appeal was presented within time. The period prescribed for preferring a special appeal by Rule 10 of Chapter IX of the Rules of Court Vol. I is 60 days.

2. It may be pointed out at this stage that the appellants have, by way of precaution, made an application for condonation of delay also u/s 5, Limitation Act but that application is not before us today. The learned counsel contends that the appeal is within time and seeks a decision on that issue.

3. On 25-1-1956 also this case was listed before us, and after hearing the learned counsel for the appellants only we held that it was within time. It now appears that the learned counsel for the respondents had put in appearance before that day but his name was not printed in the list. The result was that he did not notice the case and the hearing was ex parte. He made a grievance of the fact that the order was passed without hearing him. We, therefore, set aside the order & gave him an opportunity of being heard. We have now heard both sides and we have to determine the question mentioned above.

4. It is common ground between the parties that if the time between the making of the application for the copy of the decree and preparation of the said copy be excluded from computation the appeal is within time. But if that period cannot for any reason be excluded it is beyond time.

5. The learned counsel for the appellant relies on Section 12 (2), Limitation Act which says that:

"In computing the period of limitation prescribed for an appeal the time requisite for obtaining a copy of the decree, sentence or order appealed from shall be excluded."

and cites the recent decision in Sehat Ali Khan v. Abdul Qavi Khan AIR 195C All 273 (A). In this Full Bench a special appeal had been preferred against the judgment of a single Judge of this Court delivered in a second appeal. A decree had been prepared in second appeal but the appeal had been filed under Chapter VIII Rule 5 which permits appeals against judgments only. The full Bench held that the time taken in obtaining the copy of the decree could be excluded from computation.

6. The arguments advanced by the learned counsel for the respondents is that u/s 12 (2) the time requisite for obtaining a copy of the decree "appealed from" can be excluded. He maintains that since the special appeal under Rule 5 of Chapter VIII was not against the decree but against the judgment the benefit of Section 12 (2) cannot be claimed by the appellants. If this argument is correct the view of the Full Bench should have been different.

Before the Full Bench also the appeal was a special appeal under Chapter VIII Rule 5 and was an appeal against a judgment. The time required for obtaining a copy of the decree was excluded. In the circumstances we find no force in the contention that since the appeal is against the judgment as distinguished from the decree the time spent in obtaining a copy of the decree cannot be excluded. We are bound by the view taken by the Full Bench and have to follow it.

7. The next contention put forward by the learned counsel for the respondent is that under the Rules of Court no decree is required to be prepared in a writ matter and that if the office unnecessarily prepared a decree it could not, by doing an unnecessary act, clothe the appellants with a right to claim exclusion of the time taken in obtaining that document. In order to consider this objection it

is necessary to refer to Rule 6 of Chapter VII of Rules of Court Part I. It runs as follows:

"After a suit or a proceeding in the nature of a suit, or an appeal from a decree has been heard and decided, a decree shall follow the judgment. In other cases, unless otherwise ordered, a formal order shall follow the order finally disposing of the case or any order by which costs have been awarded."

From the language of this rule it follows that A decree should be prepared provided the writ matter is "a suit" or "a proceeding in the nature of a suit". The petition was filed in the present case in this Court in the exercise of its ordinary original civil jurisdiction. Under the Letters Patent ordinary original civil jurisdiction was confined to Probate, matrimonial and company matters. When the Letters Patent were abolished this jurisdiction was preserved by clause (9) of the U. P. High Court Amalgamation (Order) 1948.

When the Constitution came into force a special jurisdiction was conferred on this Court by Article 226 to entertain writs. From that date the ordinary original civil jurisdiction was further extended so as to include the hearing of writs. Writ proceedings are therefore in our opinion "proceedings in the nature of a suit" within the meaning of the expression as used in Rule 3 of Chapter VII, of the Rules of Court. Therefore a decree was rightly prepared by the office and the time spent in obtaining a copy thereof can be excluded in computing the period of limitation for the appeal.

8. Even if it be taken for granted that the Rules of Court do not require preparation of a decree, the preparation of a formal order is inevitable. Rule 6 of Chapter VII quoted above indicates that a formal document (other than a judgment) must necessarily be drawn up in each case to embody the decision of the Court. Unlike judgment it shall not contain the reasons for decision but should contain the substance of the decision. This formal document, if not a decree, must be a formal order.

A question will then arise whether the time spent in obtaining copy of the formal order should be excluded from computation u/s 12(2), Limitation Act. It may be pointed out that the word used in that section is "order" and not "formal order". But the term "order" is general and is, in our opinion, comprehensive enough to include all kinds of orders including a "formal order". This means that the document prepared by the office and described as a decree can be treated as a formal order and the time spent in obtaining its copy can be excluded u/s 12 (2), Limitation Act.

9. Thus, from every point of view the appellants are entitled to exclude the period spent in obtaining this document. Their appeal is there fore within time and we declare it to be so.