
(1986) 11 DEL CK 0060
In the Delhi High Court
Case No : F.A.O. No. 229 of 1986

Union of India

APPELLANT

Vs

M.M. Anand and others

RESPONDENT

Date of Decision : 20-11-1986

Acts Referred:

Citation : (1986) 11 DEL CK 0060

Hon'ble Judges : Jagdish Chandra, J

Bench : Single Bench

Advocate : Wazir Singh, with Rattan Lal, for the Appellant;

Final Decision : Dismissed

Judgement

Jagdish Chandra, J.—This order shall dispose of the question of limitation in filing this appeal as also 26 other similar appeals which have all arisen out of the same award dated 21st May, 1986 made by Shri P. K. Bahri, then Addl District and Sessions Judge, Delhi, in his capacity as Arbitrator u/s 8 of the Requisitioning and Acquisition of Immovable Property Act, 1952 (Act 30 of 1952). u/s 11 of the said Act any person aggrieved by such an award is entitled to prefer an appeal against the same to the High Court within 30 days from the date of the award.

2. When the appeal was filed on 8th July, 1986 the memorandum of appeal was not accompanied by a certified copy of the judgment contained in the said award. The ordinary copy of the award was, however, filed along with the memorandum of appeal but the endorsement of "true copy" on that copy was made by Shri Rattan Lal Advocate counsel for the appellant only subsequently much later on 30th October, 1986. Order XLI, Rule 1 of the CPC 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

decree appealed from and (unless the Appellate Court dispenses therewith) of the judgment on which it is founded.

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.

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3. No application for the exemption of filing certified copy of the award was made by the appellant along with the memorandum of appeal or soon thereafter but was filed only as late as 18th November, 1986 even though that application is dated 11th November, 1986.

4. The word "copy" used in Order XLI, Rule 1 of the CPC means only a "certified copy" and the authoritative pronouncement on this point is afforded by Shakuntala Devi Jain Vs. Kuntal Kumari and Others, , which held as follows :-

".....A decree and a judgment are public "documents and u/s 77 of the Evidence Act only a certified copy may be "produced in proof of their contents. The memorandum of appeal is not validly presented, unless it is accompanied by certified copies of the decree and the judgment."

5. Ram Nath Vs. Kanhya Lal and Another, is another authority upon this very point and it also lays down that "copy" within the meaning of Order XLI, Rule 1 means a "certified copy". This authority has also held that even after the appeal is admitted without a certified copy accompanying it, it can still be dismissed on the ground that certified copies were not filed with it. So obviously when the memorandum of appeal was not accompanied by a certified copy of the award, the appeal was liable to be dismissed on that short ground under Order XLI, Rule 1, C.P.C. Had there been an application accompanying the memorandum of appeal for dispensing with the filing of certified copy of the award, the same could have been considered by the Court which could have passed the order dispensing with the filing of the certified copy subject to the filing of the same within limitation for the filing of this appeal.

6. The appeal was filed on 8th July, 1986 on the reopening of this Court after summer vacation (7th July, 1986 was declared holiday immediately after vacation on account of the death of Babu Jagjivan Ram). Regarding the question of limitation the following dates are also relevant :-

a) Date of the award : 21-5-1986

b) Certified copy of the award applied for : 31-5-1986"

c) Certified copy of the award ready and obtained : 29-8-1986

7. For the purpose of verifying the question of limitation, Mr. Rattan Lal

Advocate, Standing Counsel of the appellant Union of India, on the asking of the Court, produced the certified copy of the award which shows that it was delivered to the appellant on 29th August, 1986 and this certified copy be now placed on the records of this appeal. It would be seen from the above mentioned dates that ten days were lost by the appellant in applying for obtaining certified copy of the award. So, the remaining 20 days of limitation for filing the appeal which are to be computed from 29th August, 1986 on which date the certified copy of the award was actually obtained by the appellant, expired on 18th September, 1986. The certified copy of the award was not filed by the appellant immediately after obtaining the same on 29th August, 1986 nor was there earlier any application, as pointed out already, along with the memorandum of appeal for the grant of exemption in respect of the filing of the certified copy, and such an application for exemption was filed by the appellant as late as 18th November, 1986 when the certified copy of the award was already with the appellant since 29th August, 1986. This is a gross delay on the part of the appellant in not filing the certified copy of the award in this appeal. When the certified copy of the award was already with the appellant on 29th August, 1986 the making of the application for exemption from filing the certified copy on 18th November, 1986 was obviously meaningless besides suffering from gross delay. The appeal is, therefore, barred by limitation.

8. It is contended by the learned counsel for the appellant that this Court has wide power to condone the delay in the filing of the appeal which has been filed otherwise within limitation though without the certified copy of the award, u/s 5, Limitation Act, 1963. But it would be seen that even no such application u/s 5, limitation Act has been filed by the appellant and there is hardly any question of considering that contention of the learned counsel for the appellant. The aforesaid facts, even otherwise, clearly go to point out the gross neglect on the part of the appellant and utter lack of bona fides so as to induce the Court to condone the delay in filing the appeal on account of the want of the certified copy of the award, u/s 5, Limitation Act. *Shakuntala Devi Jain Vs. Kuntal Kumari and Others*, while dealing with the meaning of the words "sufficient cause" occurring in Section 5, Limitation Act, unmistakably clarified that even though those words should receive a liberal construction so as to advance substantial justice, there should be no negligence nor inaction not want of bona fides imputable to the appellant. In the particular circumstances of that case the Supreme Court condoned the delay in the filing of the appeal for want of certified copy as the failure of the copying department to supply the certified copy in respect of applications made by the appellant therein contributed largely to the unfortunate delay in filing the same. The facts of the case in hand are entirely different and have no semblance of any bona fides on the part of the appellant inasmuch as the certified copy has been obtained on 29th August, 1986 and was not filed within limitation thereafter nor any application was made for seeking exemption application _filed on 18th November, 1986 has given no reasons for the inability of the appellant to file the certified copy though obtained much earlier.

9. The contentions of Mr. Wazir Singh Advocate counsel for the appellant that the client should not suffer on account of the mistakes or misapprehension of the counsel who was under a bona fide belief that the word "copy" used in Order XLI, Rule 1, C.P.C was only an ordinary copy and not a certified copy and further that even Section 11 of the Requisitioning and Acquisition of Immovable Property Act, 1952 which provides for the filing of appeal against the award does not mandate the filing of any copy of the award, do not commend themselves and are discarded, because the procedure on this point is of wide and common knowledge regarding the filing of the certified copy or seeking exemption in respect thereof by making an appropriate application, and the provision contained in Section 11 of the Requisitioning and Acquisition of Immovable Property Act, 1952 provides only the remedy of appeal the procedure in respect of which also is covered by the (sic)ocedural provision contained in Order XLI, Rule 1, CP.C.

10. For the aforesaid reasons, the appeal is held barred by limitation and is, therefore, dismissed as such in limine.