
(1985) 03 CAL CK 0009
In the Calcutta High Court

Case No : Application in Appeal No. 40 of 1985 against Suit No. 305 of 1982

United Commercial Bank

APPELLANT

Vs

M.C. Shaw Bonded Warehouse and Others

RESPONDENT

Date of Decision : 08-03-1985

Acts Referred:

Limitation Act, 1963 — Section 12(2)

Citation : AIR 1985 Cal 445

Hon'ble Judges : R.N. Pyne, J;Prabir Kumar Majumdar, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

R.N. Pyne, J.—In 1982 the appellant/ petitioner (hereinafter referred to as "the petitioner") filed a suit against the defendants/ respondents (hereinafter referred to as "the respondents"), inter alia, for recovery of Rs. 3,54,050.42 paise, interim interest, interest on judgment and other reliefs. On 3rd Sept., 1984 a decree was passed by Mrs. Pratibha Bonnerjea, J. On 5th Sept., 1984 the requisition for drawing up and to complete the decree was given on behalf of the petitioner. On 15th Sept., 1984, the matter was mentioned for modification of the said decree. On and from 27th Sept., 1984 the High Court closed for Puja vacation and it reopened on 29th Oct., 1984. On 30th Oct., 1984 requisition for certified copy of the decree dt. 3rd Sept., 1984 was given to Court's Department on behalf of the petitioner. On 18th Jan. 1985 the draft decree was settled and passed before the Senior Master. On 30th Jan., 1985 memorandum of appeal was filed on behalf of the petitioner. In the aforesaid circumstances the petitioner has made the instant application, inter alia, for the following prayer :

"One day"s delay in making the application for certified copy of the decree be condoned and the time for the same be extended till Oct. 30, 1984".

2. It is stated by the petitioner that the decree has been settled but the certified copy of the decree and judgment is not yet available. For explaining the delay it

is stated by the petitioner that it took decision to file an appeal against the decree regarding grant of interest and accordingly, by its letter dt. 22nd Oct., 1984 and received by its Advocates-on-Record on 24th Oct., 1984 the petitioner instructed its Advocates-on-Record to take steps for filing of the appeal. The petitioner's Advocates-on-Record, accordingly, instructed its clerk to file requisition for obtaining the certified copy of the decree on the reopening day of the Court after Puja vacation, that is, on 29th Oct. 1984. The clerk of the petitioner's Advocates-on-Record undertook to do the same on the reopening day of the Court after Puja vacation. However, the clerk of the petitioner's Advocates-on-Record, Sri Gobinda Pal, did not attend the office on the reopening day without any prior intimation. Thereafter, on the next day, that is, on 30th October, 1984 the petitioner's Advocate in charge of the matter himself took steps and filed the requisition for certified copy of the decree in the Court's Department.

3. One Gobinda Pal, the clerk of the petitioner's Advocates-on-Record has filed an affidavit affirmed by him on the 25th Feb. 1985. In the affidavit it is stated that on 24th Oct. 1984 he was instructed by Mr. Das, Advocate of the firm of the petitioner's Advocates-on-Record to put in requisition for certified copy of the decree for preferring an appeal against the decree dt. 3rd Sept., 1984 on the reopening day, i.e., on 29th Oct., 1984 after the long vacation and he undertook to do the same. It is further stated that he is a permanent resident of Nabadwip and is a daily passenger and attends office from Nabadwip by train. It is also stated that on 29th Oct. 1984 he could not attend office owing to the serious illness and being bed-ridden he was not in a position to contact the office from such a remote distance and as such he could not intimate the office to put in requisition for a certified copy of the decree.

4. In the affidavit-in-opposition it is stated that there is no time limit for applying for a certified copy of the decree or order of a Court and as such the question of delay or condonation thereof does not and cannot arise. It is further stated that in the instant case there is no question of one day's delay but there is considerable delay in filing the appeal of about 155 days which remains totally unexplained. It is further stated that putting in requisition for the certified copy of an order or decree beyond the period of limitation prescribed for the filing of the appeal therefrom does not have the effect of suspending or extending the period of limitation and more so when such an appeal has in fact been filed without such certified copy. It is also stated that facts of this case show that no diligent effort was made by or on behalf of the petitioner to obtain the certified copy of the decree or the judgment in good time. It is further stated that on 29th Oct. 1984 (when the Court reopened after long vacation) when it was found that the clerk concerned did not attend office the petitioner's Advocate could have put in requisition for the certified copy of the decree considering the urgency of the matter and the question of limitation involved therein. What is claimed to have been done by the petitioner's Advocate on Oct. 30, 1984 could have as well been done on Oct. 29, 1984.

5. Here it may be noted that we pointed out to the counsel appearing for the petitioner that no time limit is prescribed for filing the requisition for the certified copy and, therefore, no question for condoning the delay for putting in requisition arises as prayed for by the petitioner in the instant application. Counsel for the petitioner has submitted that prayer should be for condonation of delay in filing the appeal and not for putting in requisition for the certified copy of the decree.

6. Counsel appearing for the petitioner has submitted that there is one day's delay in putting in the requisition for the certified copy of the decree dt. 3rd Sept., 1984. The said delay has been explained by the petitioner. It is further submitted that immediately on filing of the requisition for the certified copy of the decree the time for filing of the appeal stood arrested and the period to be taken by the Court for issuance of the certified copy of the decree should be excluded in counting the time for filing of the appeal. Counsel has also submitted that there was no delay or laches or negligence either on the part of the petitioner or its Advocates-on-Record for putting in the requisition for the certified copy of the decree in the instant case. In any event, there is one day's delay and the said delay has been explained by the petitioner and, therefore, delay should be condoned. In support of his submissions learned Counsel relied on the cases of *Karali Charan Sharma v. Apurba Krishna Bajpayi*, AIR 1931 Cal 298; *Kuldip Singh Vs. Krishna Kumar and Others*, and *Indian Iron and Steel Co. Ltd. Vs. C.G. Engineering Private Ltd.*, and *Rafiq and Another Vs. Munshilal and Another*, .

7. Counsel for the respondent has submitted that there is no time limit for filing the requisition for the certified copy of the decree. If such requisition filed after the expiry of the period of limitation for preferring an appeal, then the period for preferring the appeal cannot be extended u/s 12(2) of the Lim. Act. It is submitted that in the instant case the time for preferring the appeal expired on Oct. 29, 1984. After the expiry of such period on Oct. 29, 1984 requisition for obtaining certified copy of the decree was filed. In the instant case as the requisition for obtaining the certified copy of the decree was put in after the period prescribed for filing of the appeal the petitioner is not entitled to exclude the time requisite for obtaining the certified copy of the decree appealed from in computing the period of limitation for filing the appeal. In the instant case decree was passed on Sept. 3, 1984 and the time prescribed for filing of the appeal is thirty days under Article 117 of the Schedule of the Lim. Act. Such time expired on Oct. 29, 1984 when the Court reopened after the long vacation. Appeal was filed on Jan. 30, 1985 i.e., long period after the expiry of the period prescribed for filing of the appeal. If the requisition for obtaining the certified copy of the decree was made after the time prescribed for filing the appeal then the time requisite for obtaining the certified copy of the decree shall not be excluded in computing the period of limitation for filing the appeal against a decree. Further, in the instant case the delay for preferring the appeal has not been explained. Therefore, no question for condonation of delay arises in the instant case. In

support of his submissions Counsel has relied upon the cases of Krishna Kumar Khemka and Another Vs. Jagadish Narayana Bhan and Others, and Kedar Lall Seal v. Hari Lall Seal, (1950) 85 Cal LJ 299.

8. The cases relied on by the learned Counsel of the petitioner as mentioned above show that in following cases delay for filing the appeal was condoned. When appeal is presented some days after the expiry of the period of limitation then the reason for the delay after the period of limitation is to be explained but antecedent inaction or negligence is not material. Further, bona fide mistakes of the Counsel or his clerk in the facts and circumstances of a case is sufficient cause for extending the period of limitation u/s 5 of the Lim. Act. Also the time taken by the lawyers to prepare the draft and time taken by the Court, if reasonable, and the delay was not due to negligence or laches of the party or its Advocate then the delay should be condoned. Further, if a client has taken all steps in the matter which he is required to do then for the negligence or default on the part of his lawyer or his clerk the innocent party should not suffer.

9. In the case of Krishna Kumar Khemka and Another Vs. Jagadish Narayana Bhan and Others, and (1968) 72 Cal WN 296 the Court held that in order to exclude the time taken for obtaining certified copy in favour of the appellant the application for certified copy should be made within the time of limitation and if this was not done, the time taken for obtaining certified copy should not be excluded in favour of the appellant. The Court further relied on the decision of the Supreme Court in the case of A.D. Partha Sarathy Vs. State of Andhra Pradesh, where construing the period to be excluded u/s 12(2) of the Lim. Act 1963 following observation was made by the Supreme Court :

"If time taken for obtaining a copy of the order before the commencement of the period of limitation could be excluded, on the parity of reasoning, time taken for obtaining a copy of the order after the period of limitation, also could be excluded. This would lead to an anomalous position: a party can keep quiet till the period of limitation has run out and thereafter apply for a certified copy of the order and claim to exclude the time taken for obtaining the certified copy of the order from the period of limitation. That could not have been the intention of the Legislature".

10. In the case of Kedar Lall Seal v. Hari Lall Seal ((1950) 85 Cal LJ 299) (supra) it was held that time requisite for obtaining the certified copy of the decree begins to run in favour of the proposed appellant from the date upon which he applies for a copy. If time has already run out against the appellant then it appears that he cannot rely upon Section 12 of the Limitation Act. In that case 90 days for preferring the appeal expired before the application was made for certified copy of the decree and that being so it was held that the appeal was out of time.

11. Section 12 of the Limitation Act provides when for computation of period of limitation the time in taking the legal proceedings is to be excluded. Section

12(2) provides that 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.

12. No time limit is fixed for making an application for a certified copy of the order or decree to be appealed against. If, however, an application is made for obtaining a certified copy of the order or decree for the proposed appeal within the period of limitation prescribed for preferring the appeal then the time requisite of obtaining a certified copy of the order or decree shall be excluded in computing the period of limitation for preferring the appeal. If, however, as the decisions mentioned above show, where an application for the certified copy of order or decree to be appealed against is not made before the expiry of the period of limitation prescribed for preferring the appeal from the order or decree then the proposed appellant is not entitled to the benefit of deducting the time requisite for obtaining the certified copy of the order or the decree in the matter of computation of the period of limitation for preferring the appeal against the order or decree. If the proposed appellant has allowed the period for preferring the appeal against the order or decree to run out he is not entitled to the benefit of Section 12 of the Limt. Act. In the instant case decree was passed on Sept. 3, 1984. The time for preferring the appeal expired on Oct. 29, 1984. As the requisition for a certified copy of the decree was put in on Oct. 30, 1984, that is after the expiry of the period prescribed for preferring the appeal the petitioner is not entitled to the benefit of Section 12(2) of the Limt. Act. As no limit is prescribed for putting in the requisition for the certified copy of the decree or the order no question of condoning the delay for doing the same arises as prayed for by the petitioner. In this case time to file the appeal admittedly expired on Oct. 29, 1984. The appeal was filed on Jan. 30, 1985 without a certified copy of the decree. As the petitioner is not entitled to the benefit of Section 12(2) of the Lim. Act for reasons stated hereinbefore, it has to explain the delay for the period between Oct. 30, 1984 to Jan. 29, 1985. No cause has been shown by the petitioner for condoning such delay save and except that it applied for the certified copy of the decree on Oct. 30, 1984 and has not yet received the same. As no cause has been shown explaining the delay in filing the appeal the same, in our opinion, is time barred.

13. For all the reasons stated above the application is dismissed with cost.

14. There will be a stay of the operation of this order for three weeks from date.

Prabir Kumar Majumdar, J.

15. I agree.