

(1991) 04 AHC CK 0035

In the Allahabad High Court

Case No : Civil Miscellaneous Application No. Nil of 1991, in F.A.F.O. No. 820 of 1990

U.P. State Road Transport Corporation

APPELLANT

Vs

Kedar Singh and others

RESPONDENT

Date of Decision : 17-04-1991

Acts Referred:

Allahabad High Court Rules, 1952 — Rule 245, 260
Evidence Act, 1872 — Section 77, 79
Limitation Act, 1963 — Section 12, 5
Motor Vehicles Act, 1988 — Section 173

Citation : AIR 1991 All 317

Hon'ble Judges : N.N. Mithal, J;G.D. Dube, J

Bench : Division Bench

Advocate : D.K.S. Rathor, for the Appellant; Mr. T. Rathore and Mr. Y.S. Rathore, for the Respondent

Judgement

N. N. Mithal, J.—An application under S. 5 of the Limitation Act is the subject of consideration by us. On 20-8-1990 when the Stamp Reporter gave his report on the memo of appeal it mentioned that the appeal would be within time up to 14th October, 1990. The appeal was actually presented on 21st August, 1990.

2. The appeal came up for admission before the Court when it was observed that the certified copy of the judgment appeared to have been tampered with. In the column meant for indicating the date when the copy was ready there appeared to be some overwriting and in place of 21st May, 1990 the words and figures 27-7-90 seemed to have been overwritten. On suspicion being aroused the court directed the Stamp Reporter to submit a fresh report. In the meantime Sri Y. S. Rathor, had also put in appearance for the respondent to oppose it and, therefore, he was also granted time to file a counter-affidavit but none has yet been filed. The Stamp Reporter submitted a fresh report on 27th August, 1990 showing his inability to give any definite report in the matter unless a report from the District Judge, Gorakhpur is obtained as to the correct date when the

copy was ready. Accordingly, on 7-9-1990 the Court sent for the report of the District Judge which has since been received in a sealed cover with a covering letter dated 12th Oct., 1990.

3. When the matter again came up before the Court on 8-3-1991 the sealed envelop was opened and the report of the District Judge was examined. According to the report, which is based on entries in the register of certified copies, the certified copy was ready on 21-5-90 and not on 21-7-90 and had been delivered to the applicant on 25-5-90. The Stamp Reporter in compliance with the direction of the Court again submitted a fresh report on 18-3-91 to the effect that the appeal was presented seven days beyond time. In the meantime an application under S. 5 of the Limitation Act duly supported by an affidavit was also moved on 27-2-91 seeking condonation of delay in filing the appeal. A supplementary affidavit has also been filed on 21-3-91 to explain the delay in the light of the report of the District Judge.

4. We have heard learned counsel for the parties and have also gone through the various affidavits filed by the appellant and perused the record. It is now no longer disputed that the correct date on which the certified copy was ready was 21-5-90 and not 21-7-90. It is also not in dispute, therefore, that the appeal was beyond time by seven days when it was presented. From para 3 of the supplementary affidavit it is revealed that the D.G.C. (Civil) while giving his opinion had also clearly mentioned that the appeal was within time only up to 14th August, 1990. Certified copy of the judgment and decree along with the record and his opinion was then forwarded to the law officer of the appellant Corporation on 2-6-90 and necessary sanction to file the appeal was accorded on 20-6-90. These papers were received back by the appellant on 26-6-90 and on 22-7-90 the deponent of the affidavit came to Allahabad and contacted the standing Counsel of the Corporation, Sri D. K. S. Rathor for filing the appeal. The deponent also obtained a receipt from the counsel after handing over the papers to him. The counsel then advised that the appellant should also deposit a sum of Rs. 25,000/- before the Accidents Claims Tribunal as required under S. 173 of the Motor Vehicles Act, 1988. Accordingly the requisite amount was also deposited on 1-8-90, as advised. Nothing was, however, heard from the counsel thereafter, and it was revealed much later that appeal was presented for reporting on 20th August, 1990 and it was filed on 21st August 1990.

5. None of these facts are in controversy and clearly reveal that everything was going on smoothly and well in time until the Counsel for the Corporation was contacted at Allahabad and the papers were handed over to him. It is also significant that the D.G.C. in his opinion had also mentioned that the time to file the appeal will expire on 14th August, 1990. From this it is not difficult to infer that up to that stage certified copy was intact and the date 21-5-90 was still shown there. The, overwriting, changes in this date from 21-5-90 to 21st July, 1990 and words to that effect, must have been done thereafter. Since every thing was being done well within the target date i.e. 14th August, 1990 it

appears to us, that all along the Corporation and its officials were conscious that the appeal had to be filed on or before 14th August, 1990 and had been doing all that was within their power to file the appeal before that date. Even necessary documents had been left with the counsel on 22-7-90 and deposit of Rs. 25,000/- was also made on 1-8-1990.

6. However, the period thereafter is full of darkness and remains unexplained. We are not informed by any affidavit or otherwise as to what really happened after the papers had been handed over to the learned counsel. The affidavit of the counsel or even of his clerk are conspicuous by (sic) their absence. Learned counsel for the respondent has vehemently urged that in this situation the only conclusion possible is that interpolation in the certified copy as to the date when it was ready could only have been made in the office of the counsel after the papers had been entrusted to him. We hesitate to accept this for, in our opinion, no counsel worth his salt is likely to indulge in this kind of fabrication or ever to stoop so low as to involve himself in such fabrication of Official record. However, we are certain only about one fact that the date 21-5-90 was intact till the time these copies were handed over to the Counsel for the corporation. As we have pointed out earlier-we are totally in the dark about what actually happened there after and we are left to make conjectures as to what really may have occurred. We feel that for some reasons the counsel could not perhaps prepare the appeal immediately, may be due to papers being mislaid some where. Later, when the papers were discovered it was too late as limitation for the appeal had already expired. It is possible that some one working in the office of the Advocate, fearing serious reprimand from him thought of this device and manipulated this date in the certified copy by converting the date to 21st July and this caused the Stamp Reporter to mention in his first report that the appeal could be filed by 14th October 1990. If this interpolation had escaped notice of the court perhaps nothing further would have happened, not even an order for enquiry by the District Judge in this matter.

7. We are pained and regret very much that such a thing should have happened at all. We would have wished to take stringent action against the guilty just to keep the name of this noble profession fair and unblemished but alas we have no material before us to pin point who really is guilty for all this, One thing is, however, very clear that this kind of mistake could have been prevented if the Copying Department had not been guilty of laxity in issuing the certified copy Contrary to the rules by failing to mention the relevant dates both in words and figures. We cannot visualise any reason why the copy should have been issued without mentioning these dates in words also. The very purpose and rationale behind the Rules is to prevent any interpolation in the dates. If the Copying Department itself fails in mentioning the dates in words mistakes of this kind are bound to occur.

8. We would have wished if we could leave the matter here but of late we are experiencing a general deterioration in Copying Departments in most of the

districts as we find that certified copies are now issued in total disregard of Rules. We have, therefore, decided to take up this matter on the judicial side as all attempts to curb it on the administrative side have not yet borne fruit. We also notice that this malady has spread far and wide and must be curbed forthwith.

9. Mainly there are two types of violations; first where certified copy instead of being issued by the Copying Department is issued by some other functionary and second where the certified copy is issued in utter disregard of Rules. Apart from this, quite often dirty badly written or typed, illegible copies are also being issued frustrating the very object of obtaining the certified copy. This is compounded by issue of copies prepared by photostat process even when the order is handwritten. It is needless to emphasise that a certified copy prepared by photostat can be issued only when it is prepared by the Copying Department itself under the supervision and control of its own officials and not otherwise. The system of getting the photostat copies prepared outside the Copying Department and then certifying it as true copy is wholly contrary to Rules.

10. The High Court has prepared very elaborate rules for preparation and issue of certified copy by subordinate Courts and entire Chapter "X" is devoted for the purpose. Here a reference to Rules 245 and 260 may be appropriate. The former places total bar on issue of certified copy except in the manner provided by the Rules. Rule 260 prescribes that every certified copy shall indicate the date of application, the date of posting the notice and the date of delivery in words as well as in figures. The text of the Rule may be reproduced here.

Rule 260 -- "When a copy is ready for delivery notice thereof in Form No. 30 shall forthwith be placed on the notice-board of the court; and the head copyist shall endorse upon the first sheet of the copy the date of the application, the date of posting the notice on the notice board, and the date when delivery of the copy was made. Such date shall be entered in words as well as in figures. (Emphasis ours)

11. The precise object of this rule apparently is to exclude all possibility of tampering with these dates which play a crucial role in computing the period of limitation. When the relevant dates are shown both in words and: figures the possibility of interpolation in dates is almost eliminated. However, the certified copies of judgments as also of the formal order in this case have been issued in utter disregard of this Rule, which shows lack of supervision and control of the Copying Section. We feel constrained to direct the District Judge, Gorakhpur to set up an enquiry into this matter immediately and fix responsibility on the guilty. He shall also look into the work of the Officer-in-charge, Copying section in the district and take necessary steps for ensuring effective ^supervision. Suitable action be also taken against those found guilty. This has now become necessary as we find that repeated circular letters from the High Court have not had the desired result. Two of the recent ones on the point are No.39/VE-65-Admin(g) dated 26-10.1988 and No.67/VE-65-Adm.(g) dated 22-9-1989 which

appear to have gone unnoticed in the subordinate courts.

12. On the quality of certified copy also circular letters have been issued on 22-9-1959, 22-9-1951, 6-12-1951, 6-8-52, 6-5-57, 1-11-1968, 15-10-63, 24-9-63 and 7-4-1981. We regret to say that even after so many attempts by the High Court to caution and alert the courts no sign of improvement is visible. In fact things appear to be getting worse with each passing day and this decline must stop at once. The District Judges and Officer-in-charge of Copying section in each district must be more careful in future in maintaining effective supervision over the working of copying Department.

Office is directed to send a copy of this order to the District Judge, Gorakhpur along with photostat copies of the two certified copies accompanying the memo of appeal within ten days and the District Judge will send the report within two months of the receipt of the papers by him. A copy of this order be also circulated to all the District Judges and Officer-in-charge of Copying department in the State.

13. Enough on this aspect and let us now revert back to the case in hand. As we have observed earlier the material on record is not sufficient to fix responsibility for these alterations of date on any one and, therefore, we need not probe the matter further. Counsel for the respondent also was not very enthusiastic and we also feel that we should put an end to the enquiry here.

14. The only question, therefore, that remains is as to whether delay has been sufficiently explained. As we have pointed out earlier the appellant Corporation was not guilty at all as it has done all within its power before expiry of the period of limitation. The "delay, if at all, has been caused on account of some mistake by the counsel or his office. If the mistake is not attributed to the party and can be attributed to some one who was handling its affair on its behalf the appellant cannot be made to suffer on that account. In this case we feel fully satisfied that the Corporation having taken all timely steps and not being guilty at any stage for any lapse or negligence on its part it should not be allowed to suffer for the mistake of his counsel or the counsel's office. The delay, therefore, has been sufficiently explained and in our opinion the application deserves to be allowed.

15. Accordingly the application under S. 5 of the Limitation Act is allowed and the delay of seven days in filing the appeal is condoned.

16. Petition allowed.