

India House vs Kishan N. Lalwani on 18 December, 2002

Equivalent citations: AIR 2003 SUPREME COURT 2084, 2003 AIR SCW 78, 2003 (1) SLT 155, 2003 (1) UJ (SC) 384, 2003 (3) ALL CJ 2234, 2003 ALL CJ 3 2234, 2003 (3) SRJ 85, 2002 (9) SCALE 611, 2003 (9) SCC 393, 2003 UJ(SC) 1 384, (2002) 64 DRJ 635, (2003) 1 ANDHLD 110, (2003) 2 ICC 339, (2003) 1 INDLD 1021, (2003) 1 CURCC 56, (2002) 100 DLT 201, (2003) 1 MAD LJ 98, (2003) 1 RENCJ 30, (2003) 1 RENCJR 86, (2003) 1 RENTLR 413, (2003) 1 SUPREME 12, (2003) 1 RECCIVR 374, (2002) 9 SCALE 611, (2003) 2 WLC(SC)CVL 454, (2003) 1 UC 552

Author: R.C. Lahoti

Bench: R.C. Lahoti, Brijesh Kumar

CASE NO.:

Appeal (civil) 8548-8549 of 2002

PETITIONER:

INDIA HOUSE

RESPONDENT:

KISHAN N. LALWANI

DATE OF JUDGMENT: 18/12/2002

BENCH:

R.C. LAHOTI & BRIJESH KUMAR

JUDGMENT:

JUDGMENT 2002 Supp(5) SCR 522 The Judgment was delivered by R.C. LAHOTI, J.

Leave granted.

2. These appeals by special leave lay challenge to an order of the High Court whereby two civil revisions filed by the respondent herein under Section 25 of the Tamil Nadu Buildings (Lease and Rent) Control Act, 1960 (hereinafter, 'the Tamil Nadu Act', for short) feeling aggrieved by a common order disposing of two appeals, have been held to have been filed within the period of limitation. The High Court has condoned the delay in filing the revision petitions subject to payment of Rs. 750/- by way of costs by the petitioner to the respondent before it. The respondent in the High Court has filed these two appeals by special leave.

3. The facts in brief. The appellate order, which is the subject matter of revision in the High Court,

was passed on 25.9.2001. Application for obtaining certified copy of the order was made on 9.11.2001. Certified copy was delivered on 24.12.2001. The civil revisions were filed in the High Court on 2.1.2002. The High Court has held that there was sufficient cause for the application for certified copy having been made belatedly on 9.11.2001 when the limitation for filing the revision petitions had already expired. The High Court has also held that the time lost between 9.11.2001 and 24.12.2001 (both days inclusive) was liable to be excluded from computing the period of limitation in accordance with sub-Section (2) of Section 12 of the Limitation Act, 1963.

4. The period of limitation for filing revision in the High Court is 30 days from the date of the order impugned. It is not disputed that on 9.11.2001 when the application for obtaining certified copy was filed, the period of 30 days had already expired. It is also not disputed that if the period between 9.11.2001 and 24.12.2001 (both days inclusive) is excluded from computing the period of limitation, the revisions were filed within a period of 60 days.

5. Sub-Section (2) of Section 25 of the Tamil Nadu Act provides that every application to the High Court for the exercise of its revisional power shall be preferred within one month from the date on which the impugned order is communicated to the applicant 'provided that the High Court may, in its discretion, allow further time not exceeding one month for the filing of any such application, if it is satisfied that the applicant had sufficient cause for not preferring the application within the time specified ', i.e. one month.

6. Sub-Section (2) of Section 12 and sub-Section (2) of Section 29 of the Limitation Act 1963 are relevant which are reproduced hereunder:-"

12. Exclusion of time in legal proceedings.

xxx xxx xxx (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".

" 29. Savings.

xxx xxx xxx (2) Where any special or local law prescribes for any suit, appeal or application a period of limitation different from the period prescribed by the Schedule, the provisions of section 3 shall apply as if such period were the period prescribed by the Schedule and for the purpose of determining any period of limitation prescribed for any suit, appeal or application by any special or local law, the provisions contained in sections 4 to 24 (inclusive) shall apply only in so far as, and to the extent to which, they are not expressly excluded by such special or local law ".

7. It is well-settled that by virtue of sub-Section (2) of Section 29 of the Limitation Act the provisions of Section 12 are applicable for computing the period of limitation prescribed by any special or local law (See D.P. Mishra vs. Kamal Narayan Sharma and Anr. 1970 (2) SCC 369 and Malojirao Narsingh Rao vs. The State of Madhya Pradesh - 1969 (2) SCC 723). The period of limitation statutorily prescribed has to be strictly adhered to and cannot be relaxed or departed from for equitable considerations. At the same time full effect should also be given to those provisions which permit extension or relaxation in computing period of limitation such as those contained in Section 12 of the Limitation Act. The underlying purpose of these provisions is to enable a litigant seeking enforcement of his right to any remedy to do so effectively and harsh prescription of time-bar not unduly interfering with the exercise of statutory rights and remedies. That is why Section 12 has always been liberally interpreted. To wit, the time requisite for obtaining a copy of the impugned decree, sentence or order has been held liable to be excluded from computing the period of limitation although such copy may not necessarily be required to be filed along with appeal, application or memo of representation or review. No distinction is drawn between decrees or orders pronounced on the original side or the appellate or revisional side. No application is required to be made seeking the benefit of Section 12 of Limitation Act; it is the statutory obligation of the Court to extend the benefit where available. Although the language of sub-Section (2) of Section 12 is couched in a form mandating the time requisite for obtaining the copy being excluded from computing the period of limitation, the easier way of expressing the rule and applying it in practice is to find out the period of limitation prescribed and then add to it the time requisite for obtaining the copy - the date of application for copy, and the date of delivery, thereof both included - and treat the result of addition as the period of limitation. The underlying principle is that such copy may or may not be required to accompany the petition in the jurisdiction sought to be invoked yet to make up one's mind for pursuing the next remedy, for obtaining legal opinion and for appropriately drafting the petition by finding out the grounds therefor the litigant must be armed with such copy. Without the authentic copy being available the remedy in the higher forum or subsequent jurisdiction may be rendered a farce. All that sub-Section (2) of Section 12 of the Limitation Act says is the time requisite for obtaining the copy being excluded from computing the period of limitation, or, in other words, as we have put it hereinabove, the time requisite for obtaining the copy being added to the prescribed period of limitation and treating the result of addition as the period prescribed. In adopting this methodology it does not make any difference whether the application for certified copy was made within the prescribed period of limitation or beyond it. Neither it is so provided in sub-section (2) of Section 12 of the Limitation Act nor in principle we find any reason or logic for taking such a view.

8. If we were to accept the submission of the learned counsel for the appellant yet another consequence would follow. Section 5 of the Limitation Act or the power to condone delay by reference to proviso appended to Section 25(2) of the Act shall be exercisable for a period subsequent to the obtaining of the certified copy of the impugned order but not to the period before it. Such is not the prohibition contained in any of the said provisions. Depending on the facts and circumstances of a given case, the Court may be called upon to exercise its discretionary power to condone by the delay occasioned by the time lost either before applying for certified copy or after the delivery thereof.

9. In *Murlidhar Shrinivas vs. Motilal Ramcoomar*, 1937 AIR(Bombay) 162, the Full Bench, speaking through Beaumont, CJ, held that the Court cannot impose upon statutory right of an appellant a restriction not warranted by the Act and a rule providing that no time shall be allowed for obtaining a copy of the decree unless such copy be applied for within specified days from the date of the decree would be ultra vires. In computing the time for appeal from a decree it is legitimate (in a proper case) to exclude the period requisite for obtaining a copy of the decree even when no application for such copy was made till after the expiration of the time for appeal. A Full Bench of Madras High Court presiding over by Srinivasan, J. (later a Judge of the Supreme Court) held that though the application for certified copies of judgment and decree was made after prescribed period of limitation, the period was liable to be excluded in all cases depending on whether sufficient cause was shown or not. We find ourselves in respectful agreement with the review so taken by the Full Benches of Bombay and Madras High Courts.

10. The learned counsel for the appellant relied on a decision of this Court in *A.D. Partha Sarthy vs. State of Andhra Pradesh* - 1966 AIR(SC)

38. The facts of the case show that an application for obtaining certified copy of the relevant order was made even before the order was pronounced. The question arising for decision before the Court was whether the time between the date of the application and the date of the pronouncement of the impugned order could be treated as the time requisite within the meaning of Section 12(2) of Limitation Act. The Court ruled against the exclusion of such time. The time running between the date of application and the date of pronouncement of order when the litigant chooses to make an advance application in anticipation of the pronouncement of the decision of the Court cannot by any stretch of imagination be called the time requisite for obtaining the copy. However, it is in that context that the Court observed that the object of the Legislature was to enable the party to exclude the time requisite for obtaining a copy of the order after the period of limitation has commenced. While drafting the reasoning in support of the review taken by it the Court went on to observe -"

if the time taken for obtaining the 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 quite 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". Suffice it to say that such an observation was uncalled for to decide the issue arising for decision before the Court and therefore has to be treated as a mere observation having no precedential value and at the most an obiter. We cannot read a rider or an additional qualification in the language of sub-Section (2) of Section 12 which the Legislature itself has chosen not to provide and thereby scuttle the operation of Section 12(2) abovesaid. We are clearly of the opinion that while computing the period of limitation the time requisite for obtaining the copy has to be excluded without regard to the fact whether the copy was applied for before the expiry of period of limitation or not.

11. So far as the applicability of Section 5 of the Limitation Act is concerned the power of the Court to extend the prescribed period of limitation on the ground of availability of sufficient cause for not preferring the appeal within the prescribed period, within the meaning of Section 5 of the Limitation Act, stands circumscribed by the limitation imposed on the power of the High Court by the proviso to sub-Section (2) of Section 25 of the Act. The discretionary power to condone the delay in filing the revision can be exercised for condoning any delay which does not exceed one month over and above the period liable to be excluded from computing the period of limitation by reference to Sections 4 to 24 of the Limitation Act.

12. Computing the time within which the revisions were filed in the High Court, consistently with the law as stated hereinabove, the revisions by the respondent were filed within a period of 53 days. As the total time, excluding the time requisite for obtaining the copy, does not exceed 60 days, the High Court had power to condone the delay in filing the revision petitions. No fault can be found with the discretionary jurisdiction so exercised by the High Court.

13. The appeals are held devoid of any merit and are dismissed. Costs easy.