Ram Singh And Ors. vs Panchayati Adalat And Ors. on 11 November, 1953

Equivalent citations: 1954CRILJ512

JUDGMENT

Desai, J.

1. The applicants pray for the issue of a writ of certiorari or any other writ, order or direction quashing the orders passed by the panchayati adalat of Bhojipura and by the Subdivisional Magistrate. The applicants were prosecuted by the opposite-party No. 3 for offences of Sections 426, 323 and 506, I. P. C. before the panchayati adalat. The panchayati adalat convicted them of the offences and fined them on 12-8-1952. On 15-9-1952 they applied for a copy of the order and on 31-10-1952 they applied to the Sub-divisional Magistrate under Section 85 of the Panchayat Raj Act for revision of the order. The Sub-divisional Magistrate dismissed the application on the ground that having been filed more than sixty days from the date of the order, It was barred by time. He thought that under Section 85 of the Panchayat Raj Act an application for revision of a panchayati adalat's order must be filed within sixty days of it. As the application was made after more than sixty days, it was thought by him to be barred by time. It is contended before me that the applicants were entitled under the Limitation Act to deduct the time spent by them in obtaining the copy of the panchayati adalat's order and that if it was deducted their application was within time. They also questioned in the application the validity of the panchayati adalat's order on several grounds.

2. Their counsel has confined the application only to challenging the order of the Sub-divisional Magistrate. The merits of the panchayati adalat's order are not before me.

3. It is laid down In Section 85 of the Panchayat Raj Act that if there has been a miscarriage of justice or if there is an apprehension of miscarriage of Justice in any case, the Sub-divisional Magistrate may, on the application of any party or on his own motion, at any time in a pending case ... and within sixty days from the date of ...order, call for the record of the case and may...quash any...order passed by the panchayati adalat.

The limitation prescribed under this provision is not for the making of an application by the aggrieved party but for me calling for the record of the case. The law is that the record must be called for within sixty days from the date of the order and not that an application for revision must be made within that period. I do not know why the Legislature prescribed the period of limitation not for the doing of an act by a party but for the doing of an act by the Court. H it be said that no period of limitation is prescribed by the Legislature for an application under Section 85 of the Act, the limitation would be governed by the residuary Article 181 of the Limitation Act. This article does not govern an application for revision under the Codes of Criminal and Civil Procedure but it does not

follow that it would not govern an application for revision under Section 85 of the Panchayat Raj Act also. This revision is different from the revision filed under the Codes.

Section 115 of the Code of Civil Procedure and Section 435 of the. Code of Criminal Procedure do not mention any applications to be made for the exercise of revisional powers; they simply provide for the summoning of the record by the Courts of revision. As they deal only with the summoning of the records by the Courts of revision, there does not arise any question of a period of limitation for making an application for revision. But Section 85 of the Panchayat Raj Act specifically refers to an application to the Sub-divisional Magistrate for the exercise of his revisional powers and therefore it must be governed by some limitation. It is clear that if the record itself has to be summoned within sixty days, the application must of necessity be made within sixty days. If it is made after sixty days, it would be dismissed if not on the ground that it is barred by time, at least on the ground that the record cannot be summoned. It is evident that Article 181 of the Limitation Act is not intended to govern such an application. It seems to me that the less unreasonable view to take is that the Legislature has intended to prescribe sixty days as the period of limitation for making an application under Section 85.

4. Section 29(2) of the Limitation Act provides that ...for the purpose of determining any period of limitation prescribed for any suit, appeal or application by any special or local law-

(a) the provisions contained in Section 4, Sections 9 to 18 and Section 22 shall apply.

Therefore, while determining the period of limitation of sixty days prescribed for an application under Section 85 of the Panchayat Raj Act provisions contained in Section 12 must be applied. What this means is that the period of limitation must be determined in consonance with the provisions of Section 12. The Court must have regard to the provisions of the whole of the section and must apply them but only so far as they can be applied. The Court is not required or authorised to make any alterations in the provisions in order to make them applicable, if otherwise they would not be applicable, it is not required or authorised to apply only their principle or analogy, It must be borne in mind that Section 29 (2) makes applicable the provisions contained in several sections when the period of limitation prescribed for any suit, appeal or application is to be determined. It may be that in a certain case the provisions of one of those sections cannot be applied because it does not contain the facts to which the provisions of that section can be applied or, in other words, there may be a case "in which though due regard is to be had to the provisions of one of those sections, no effect can be given to its provisions. In such a case, it is not competent to the Court to modify the language of the section in order to give effect to its principle or to apply it by way of an analogy.

5. Section 12(2) provides that-

In computing the period of limitation prescribed for an appeal, an application for leave to appeal and an application for a review of judgment... the time requisite for obtaining a copy of the decree, sentence, or order appealed from or sought to be reviewed shall be excluded.

Under this provision the time requisite for obtaining a copy is to be excluded only while computing the period of limitation prescribed for an appeal, an application for leave to appeal or an application for a review of judgment. It is not to be excluded while computing the period of limitation prescribed for any other application. An application under Section 85 of the Panchayat Raj Act is neither one for leave to appeal, nor one for a review of judgment. Therefore, while computing the period of limitation prescribed for it, the time requisite for obtaining a copy of the order cannot be excluded. This conclusion receives support from the fact that the time that is to be excluded is specifically stated to be the time requisite for obtaining a copy of the order sought to be reviewed. The time requisite for obtaining a copy of the order sought to be revised is not required to be excluded.

6. The view that I have expressed above is supported by many authorities. In - 'Nafisuddin v. Secy. of State' AIR 1927 Lah 858 (2) (A) it was held that an application under Section 18(1) of the Land Acquisition Act, 1894, is not an application for which any provision is made by Section 12 of the Limitation Act and that the time spent in obtaining a copy of the award cannot be deducted while computing the period of limitation prescribed for making an application under Section 18(1) of the Land Acquisition Act. That decision was followed by this Court in - 'Kashi Prasad v. Notified Area of Mahoba' AIR 1932 All 598 (B). It was pointed out in that case that Section 12 of the Limitation Act refers to an application for review of a judgment and to no other application and that the time requisite for obtaining a copy of the award cannot be excluded without materially modifying the language of Section 12. A Bench of the Patna High Court applied the principle of . Section 12 to an application under Section 66(2) and (3) of the Income-tax Act in - 'Mohan Lal V. Commr. of Income-tax' AIR 1930 Pat 14 (C). I may respectfully point out that Section 29 of the Limitation Act applies the provisions of Section 12 and not the principle behind them.

7. In - 'In the matter of Gulab Chand Chotey Lal' AIR 1931 All 673 (D), a Bench of this Court held that in computing the period of limitation prescribed for an application under Section 66(3) of the Income-tax Act, the time spent in obtaining copies of the orders of the Income-tax Officer and the Assistant Commissioner of Income-tax is not to be excluded because Section 12, Limitation Act, does not apply to an application under Section 66 (3) of the Income-tax Act. In - 'Amritsar Sugar Mill Co. Ltd. v. Commr., Sales Tax, U. P., Lucknow' AIR 1952 AH 816 (E), while computing the period of limitation prescribed for an application under Section 11(2) of the U. P. Sales Tax Act, No. 15 of 1948, the time spent in obtaining a copy of the order of the revising authority was excluded on the ground that it was just and equitable that the benefit of Section 12 of the Limitation Act should be available. No reference was made in that case to the decisions in the cases of - 'Kashi Prasad (B)' and 'Gulab Chand (D)'. It also goes against the doctrine of - 'Narsingh Sahai v. Sheo Prasad' AIR 1918 All 389 (FB) (P). That was a case of second appeal from an appellate decree. The memorandum of appeal was accompanied also by a copy of the judgment of the Court of first instance, as it was required to be under a rule framed by the High Court. Thought the copy had to accompany the memorandum of appeal and the memorandum was liable to be rejected if it had not, the Pull Bench refused to exclude the time spent in obtaining it. The Court observed:

> Section 12 of the Indian Limitation Act is perfectly clear and its language is in no way ambiguous. It lays down in Clause (3) of Section 12 of the Act that where a decree is

> appealed from or sought to be reviewed, the time requisite for obtaining a copy of the judgment on which it is founded shall also be excluded. Nothing further is said, and we are unanimous in holding that this Court has no power by any rule that it may make to alter the period of limitation pre-scribed by the Indian Limitation Act.

8. This Court has power to alter, amend and add to rules of procedure laid down by the Code of Civil Procedure, vide Section 122, but nowhere has any power been given to it to touch the Limitation Act. Therefore, merely on the ground of justice and equity, the period of limitation cannot be extened by excluding time which is not required to be excluded. Moreover, as the decision in the case of - 'Amritsar Sugar Mill Co, Ltd. (E)' was about an application under the U. P. Sales Tax Act, the decision is not binding upon me. In - 'AIR 1930 Pat 14 (C)' the period spent in obtaining a copy of an order under Section 31 or Section 32 of the Income-tax Act was excluded in computing the period of limitation for an application under Section 66 (2) and (3). That was done on general principles. With great respect to the learned Judges, I do not think it could be excluded on this ground.

9. I, therefore, hold that though the period of limitation for making an application tinder Section 85 of the Panchayat Raj Act is to be determined in consonance with the provisions of Section 12(2) of the Limitation Act, the time spent in obtaining a copy of the order sought to be revised cannot be excluded as it is not an application referred to in it.

10. It was argued on behalf of the applicants that the application is an appeal within the meaning of Section 12 (2) of the Limitation Act. In - 'Raja Rajeswara Setupati v. Kamid Rowthen' AIR 1926 PC 22 at p. 24 (G), an application for revision under Section 115, Civil P.C. was treated as "an appeal in the form appropriate to such a case from the Munsif's Court." Section 73 of the Madras Village Courts Act provided for an application of revision to be made within sixty days against an order of a panchayat Court. In - 'Standard Type Foundry v. Venkataramaniah' AIR 1941 Mad 589 (H) it was held that the application was an appeal within the meaning of Section 12 (2) and was not covered by the other heads mentioned in it. It was observed on p. 590 that:

> It is difficult to say that the remedy by way of revision is essentially different from the remedy by way of appeal" and that "the term appeal occurring in Article 182 (2), Limitation Act, is not used in a restricted sense so as to exclude revision petitions.
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> Their Lordships of the Judicial Committee said in - 'Nagendra Nath v. Suresh Chandra' AIR 1932 PC 165 at p. 167 (I) There is no definition of appeal in the Civil Procedure Code, but their Lordships have no doubt that any application by a party to an appellate Court asking it to be set aside or revise a decision of a subordinate Court is an appeal within the ordinary acceptation of the term.
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> That decision was followed by a Bench of this Court in - 'Ajudhia Prasad v. U. P. Government' AIR 1947 All 390 (J) and it was stated that the word "appeal" in Article 182 of the Limitation Act should not be interpreted in the narrower sense of the term as used in the Code of Civil Procedure.

11. It was also followed by a Pull Bench of the Madras High Court in - 'Chidambara v. Ramanadar' AIR 1937 Mad 385 (K). It was contended before the Pull Bench that the same word occurring in two provisions of an Act should not be construed in two different senses and that as the word "appeal" has a narrower meaning in Articles 150 to 157, it would be wrong to give it an extended meaning in Article 182. The Full Bench repelled the contention by saying that it is recognised that if sufficient reasons exist, a word can be construed in one part of an Act in a different sense from that it bears in another part and that cogent reasons exist for giving an extended meaning to the word "appeal" in Article 182. With great respect to the learned Judges, I think the correct reply to the contention was that there is a difference between an "appeal" ('simpliciter') and an "appeal under the Code of Civil Procedure" or "of Criminal Procedure." When the word is used with reference to an Act, it must have the same meaning as is given to it in that Act. But when it is used in a general sense, it can be given an extended meaning. "An appeal under the Code of Civil Procedure" must mean a proceeding that is described in the Code as an appeal and cannot possibly be given an extended meaning so as to include an application for revision. Similarly "an appeal under the Code of Criminal Procedure" must mean a proceeding that is described in the Code of Criminal Procedure as an appeal and cannot include an application for revision. In Articles 150 to 157 the word "appeal" is not used in a general sense and is qualified by the words "under the Code of Criminal Procedure" or "under the Code of Civil Procedure," In Article 182, the word is used without any such qualification. That is why it is interpreted there in a general sense to include an application for revision also.

12. The word "appeal" is used in Section 12(2) in a general sense and is not qualified by any of the phrases mentioned above. Therefore, it must be construed in the same manner in which it is construed in Article 182. In other words, an application for revision is an appeal within the meaning of that provision. It was remarked by Agarwala, J. in - 'Kallu Mal v. Municipal Board, Nawabganj' AIR 1942 Oudh 392 at p. 393 (L) that Section 12, Limitation Act, does not apply to an application for revision probably because no period of limitation is prescribed in the Limitation Act for it. The learned Judge did not mean to say that the word "appeal" in Section 12 does not include an application for revision. He did not mean to exclude this as an additional reason for not specifically including an application for revision within the scope of Section 12. I, therefore, hold that an application under Section 85 of the Panchayat Raj Act is an appeal within the meaning of Section 12 (2) of the Limitation Act.

13. I was not impressed with the argument in the alternative that even if the application were not an appeal, since it was required by a rule of the Rules framed by Government to be accompanied by a copy of the order sought to be revised, the time spent in obtaining the copy ought to be excluded. Section 12 (2), Limitation Act, is the only provision dealing with exclusion of time on the ground that it was required for obtaining a copy. Neither does it lay down that the time can be excluded only if the copy actually accompanies the appeal or application nor does it lay down that the time spent in obtaining a copy of a decree, sentence or order must be deducted, even though it is not a decree, sentence or order appealed from or sought to be reviewed, merely because it is required by law to accompany the appeal or application. The Judicial Committee decided in - 'Jijibhoy v. T. S. Chettyar Firm' AIR 1928 PC 103 (M) that the time required for obtaining copies of the decree and judgment must be excluded even though by rules of the Court it is not necessary to obtain them. The reason is that Section 12 makes no reference to the Code of Civil Procedure or any other Act and does not say

why the time is to be excluded, but simply enacts it as a positive direction. The rules framed by this Court in regard to references under Section 66 (3) of the Income-tax Act require an application to be accompanied by copies of the orders of the Income-tax Officer, the Assistant Commissioner and the Commissioner disposing of the case, but the mere fact that these orders are required does not connote that the applicant has a right to extend the period of limitation by the period required for obtaining copies of orders other than those of the Commissioner of Income-tax under reference.

See - 'in the matter of Gulab Chand Chotey Lal (D)' at page 686. See also the case of - 'Narsing Sahai (F)' in which the Full Bench refused to deduct the time spent in obtaining a copy of the judgment of the trial Court even though it was required to accompany the memorandum of second appeal.

14. The applicants were entitled to deduction of the time spent by them in obtaining a copy of the order of the panchayati adalat. When it is deducted, their application was within time and should have been heard on merits by the Subdivisional Magistrate. The Sub-divisional Magistrate by refusing to hear it, failed to exercise jurisdiction vested in him. I, therefore, order a writ of certiorari to issue quashing the order of the Sub-divisional Magistrate dated 15-4-1953. I direct him to restore the revision application to its original number and hear it on merits.