

Hira Lal Patni vs Kali Nath on 23 December, 1955

Equivalent citations: AIR1956ALL349, AIR 1956 ALLAHABAD 349, 1956 ALL. L. J. 107

JUDGMENT

Agarwala, J.

1. A certificate under Article 133 of the Constitution was granted in the above appeal on 9-9-1955. Under Rule 7 of Order 45, Civil P. C., the appellant was to deposit Rs. 2,500/- as security within six weeks. On 4-11-1955, the applicant made an application for being allowed two weeks' further time within Which to deposit the necessary security money. The application was ordered to be put up on 11-11-1955, for orders.

On 11-11-1955, the applicant made an application that the money had been received, that he might be allowed to deposit the necessary security and that the delay may be condoned. This application was opposed by Mr. Kirti on behalf of the respondent. Mr. Hari Swarup learned counsel for the appellant was permitted to deposit the security money in Court, if deposited within 24 hours. The security, we are informed, was duly deposited on 12-11-1955.

2. Mr. Kirti, on behalf of the respondent, has urged that, firstly this Court has no jurisdiction to grant further time to deposit the security and, secondly, that there is no sufficient reason to extend the time of six weeks allowed under Order 45, Rule 7, Civil P. C.

3. As regards the preliminary objection that this Court has no jurisdiction to grant further time to deposit the security amount, the relevant Rules are Rule 7 of Order 45, Civil P. C. & Rule 3, Supreme Court Rules, 1950. Order 45, Rule 7, prescribes a period of 90 days or such further period, not exceeding 60 days as the Court may upon cause shown allow, from the date of the decree complained of, or within six weeks from the date of the grant of the certificate. As 90 days plus 60 days had long expired, the period of six weeks has to be taken into account in the present case.

The Civil Procedure Code does not give power to the Court to extend the period of six weeks prescribed by Rule 7. Under the procedure prevailing before the commencement of the Constitution when appeals lay to the Judicial Committee of the Privy Council, there was a Rule of the Judicial Committee Rule 9 of the Privy Council Rules, which was as follows:

"When an Appellant having obtained a certificate for the admission of an Appeal, fails to furnish the security or make the deposit required (or apply with due diligence to the Court for an Order admitting the Appeal), the Court may, on its own motion or on an application in that behalf made by the Respondent, cancel the certificate for the

admission of the Appeal, and may give such directions as to the costs of the Appeal & the security entered into by the Appellant as the Court shall think fit, or make such further or other Order in the premises as, in the opinion of the Court, the justice of the case requires."

This Court in a Full Bench decision -- 'Bishnath Singh v. Collector, Benares', AIR 1939 All 299 (FB) (A) held that Rule 9 of the Privy Council Rules authorised the High Court to extend the period allowed for furnishing the security and making the deposit required by Order 45, Rule 7, Civil P. C. The phrase 'or make such further or other Order in the premises as, in the opinion of the Court, the justice of the case requires' was held to empower the High Court to do so. After the commencement of the Constitution, the Supreme Court has adopted the very same Rule, with slight verbal alterations and the Rule is now 3 of Order 12 which reads as follows:

"Where an appellant, having obtained a certificate from the High Court, fails to furnish the Security or make the deposit required, that Court may, on its own motion or on application in that behalf made by the respondent, cancel the certificate and may give such directions as to the costs, of the appeal and the security entered into by the appellant as it shall think fit or make such further or other order as the justice of the case requires."

Prima facie, therefore, by applying the principles laid down by the Full Bench, this Court would have power under Rule 3 of Order 12, of the Supreme Court Rules, to grant such further time for depositing security as the justice of the case requires.

4. But it is urged by learned counsel for the respondent that Rule 3 of Order 12, Supreme Court Rules is ultra vires because the Rule does not fall within the purview of Article 145 of the Constitution.

5. It is not disputed that the Rule has been made under the power conferred upon the Supreme Court under that Article. The Article is as follows:

"(1) Subject to the provisions of any law made by Parliament, the Supreme Court may from time to time, with the approval of the President, make Rules for regulating generally the practice and procedure of the Court including-

(a)

(b) Rules as to the procedure for hearing appeals and other matters pertaining to appeals including the time within which appeals to the Court are to be entered."

It is contended that the Supreme Court's power to make Rules is confined to the practice and procedure of the Supreme Court and not of the High Court. It is urged that the Rule empowering the High Court to grant further time to deposit the security amount over and above what is mentioned in Rule 7 of Order 45 is a Rule of practice of the High Court and not of the Supreme Court, and as

such Rule 3 of Order 12 Supreme Court Rules must be held to be ultra vires.

6. We do not consider that there is any force in this argument, It is true that Article 145 empowers the Supreme Court to make Rules of the practice and procedure of the Supreme Court itself and not to make Rules of the practice and procedure of the High Court. But we think that a Rule requiring security to be furnished before an appeal can be entertained by the Supreme Court; is a Rule of the practice and procedure of the Supreme Court pertaining to appeals to be entertained by it.

The Supreme Court can lay down a Rule as to the conditions to be fulfilled by an appellant before an appeal can be heard by it and it can, therefore, lay down a Rule as to the security to be furnished by an appellant for the costs of the respondent which may be incurred by him. If it can lay down a Rule requiring security to be furnished, as it has actually done in Rule 3 of Order 12, it can also lay down the period within which the security is to be furnished or the further period which may be allowed for the same purpose.

Rule 3 of Order 12 does nothing more than to lay down the procedure to be followed in case an appellant has failed to furnish security or to make the required deposit. It lays down that the High Court may, either on its own motion or on application in that behalf being made by the respondent, cancel the certificate or make such further or other order as the Justice of the case requires.

The power given to the High Court to make an order in a case of this nature is, in effect, a matter of procedure pertaining to an appeal to be entertained by the Supreme Court and clearly falls under Clause (b) of Article 145(1). There can, therefore be no valid objection to Rule 3 of Order 12 of the Supreme Court Rules.

7. The next question is whether the justice of the case requires that the time for depositing the security should be extended. We have perused the affidavits filed by the parties and we are satisfied that, as stated by Sant Kumar Jain, who was looking after the case on behalf of the appellant, the amount could not be deposited in time because the appellant could not be contacted by him within that time and we think that in the circumstances the delay in depositing the security may be condoned.

8. The time for depositing the security is, therefore, extended till 12-11-1955, on which date the security amount was actually deposited.