

Shri Krishna vs Sm. Saraswati Devi on 3 February, 1950

Equivalent citations: AIR1950ALL499, AIR 1950 ALLAHABAD 499

JUDGMENT

Mootham, J.

1. A memorandum of appeal was presented to us yesterday one day prior to the expiry of the period of limitation by learned counsel, who at the same time asked the Court to allow the appellant one month's time within which to pay the deficiency in the court-fee amounting to Rs. 705-10-0. It is not in dispute that the court-fee payable on the memorandum is Rs. 709-6-0; the court-fee in fact paid is Rs. 3-12-0. It is clear therefore that the memorandum of appeal is presented with an insufficient court-fee, and with the knowledge of its insufficiency, for the purpose of saving limitation.

2. Section 4, United Provinces Court-fees Act provides that inter alia, no memorandum of appeal shall be received by a High Court unless the full court-fee thereon has been paid. That section must however be read in conjunction with Section 149, Civil P. C., which gives the Court power, in its discretion, to allow payment of the whole or part of the court-fee to be made after the document has been received; and we have been asked to exercise our discretion in favour of the appellant on the two-fold ground that he has not sufficient money available now to pay the court-fee and because memoranda of appeal have, in similar circumstances, been received in the past.

3. The practice of filing memoranda of appeal immediately prior to the end of the period of limitation bearing a court fee which is known to be insufficient has been severely condemned in a number of cases. In *Brijbhukhan v. Tota Ram*, 50 ALL. 980 : (A. I. R. (16) 1929 ALL. 75). Sulaiman J., as he then was, was of opinion that such an attempt to get round the provisions of the Court-fees Act should not be tolerated and that the proper course, if a litigant has not got sufficient money ready to pay the whole of the court-fee, was for the appeal to be filed when such court-fees have been made good accompanied by an application for extension of time. With great respect I agree with that opinion. The great weight of authority is in favour of the view that the Court has, under Section 149 of the Code, a full discretion in the matter--the cases will be found in *Brijbhukhan's case* : 50 ALL. 980 : (A. I. R. (16) 1929 ALL. 75) and in *Jnanadasundari Shaha v. Madhabchandra Mala*, 59 Cal. 388: (A. I. R. (19) 1932 Cal. 482) and that discretion should, in my opinion, only be exercised where the Court is satisfied that sufficient grounds exist for the full court-fee not having been paid in the first instance, for the effect of extending the time is to deprive the respondent of the right which otherwise arises from the fact that an appeal not filed in due time with the proper court-fee is barred.

4. The inability of the appellant to find the requisite money is not, in my opinion, save perhaps in very special circumstances as, for example, where he has been robbed sufficient ground for extending the period for payment. If the period allowed by the Limitation Act is considered

insufficient the remedy lies with the legislature.

5. The present practice, if indeed such practice exists, is, as Mr. Sulaiman J., said, one which should not be tolerated. In my opinion the memorandum of appeal in this case should be returned to counsel who will of course be at liberty to present it again on payment of the full court-fee and if (sic) accompanied by a petition for extension of time under Section 6, Limitation Act. Counsel for the appellant has pointed out that the appellant has neither sought to hide the fact that the memorandum is insufficiently stamped, nor to evade the law by presenting the appeal in the office of the Court at 4 P. M. on the day limitation expires--a course which, we are informed, to our regret, is sometimes followed. These are facts which may however be taken into consideration by the Court when it has before it an application under Section 5, Limitation Act.

Sapru, J.

I agree.