

## Ram Charan vs Shri Radha Kishan Ji And Anr. on 1 March, 1950

**Equivalent citations: AIR1951ALL242, AIR 1951 ALLAHABAD 242**

### JUDGMENT

1. The Stamp Reporter's report is that the appeal was filed 47 days beyond time, that is, it was in time up to 2-7-1949. The order appealed against is dated 2-6-1949. The affidavit in support of the appln. Under Section 5, Limitation Act, discloses that the order was passed late in the evening & that the appln. for copy could not, therefore, be filed before the Ct. closed for the summer vacation. The appln. for copy was filed on 4-7-1949, the re-opening day of the Ct. & the copy of the decree was ready on 13-8 1949, & was delivered to the learned counsel for the appct. on the same day. The 14th, 15th, 16th & 17th being holidays, the appeal could not be filed before the 18th & it was filed on that date. We are, therefore, satisfied that it is a fit case where the delay should be condoned, & the appln. Under Section 5, Limitation Act, granted.

2. Mr. H.N. Seth, on behalf of the opposite party has, however, urged that it was not necessary to file copies of the judgment & the decree &, therefore, the appct. is not entitled to get the time taken in obtaining the copies of the judgment & the decree. He has reld. on the language of Order 44, Rule 1, Civil P. C., which is as follows:

"Any person entitled to prefer an appeal, who is unable to pay the fee required for the memo, of appeal, may present an appln. accompanied by a memo, of appeal, & may be allowed to appeal as a pauper, subject, in all matters, including the presentation of such appln. to the provisions, relating to suits by paupers, in so far as those provisions are applicable,"

3. Learned counsel has pointed out that the rule requires that the appln. should be accompanied by a memo. of appeal & also by copies of the judgment & the decree. Under Order 41, Rule 1 Civil P. C., every memo. of appeal must be accompanied by a copy of the decree appealed from, & unless otherwise exempted, a copy of the judgment also. Under the proviso to Order 44, Rule 1 when, such an appln. for leave is filed, & this has to be filed in person, the Ct. can after perusal of the judgment & the decree reject the appln. if it is not satisfied that the decree is contrary to law or to some usage having the force of law, or is otherwise erroneous or unjust. The appln. is to admit an appeal & unless the memo, of appeal is accompanied by a copy of the decree & judgment, there can be no appeal for the admission of which in forma pauperis, the appln. is filed under Order 44, Rule 1, Civil P. C. It appears to us to be obvious that there can be no appln. filed in this Ct. for leave to appeal, unless a copy of the judgment & the decree is also filed along with the memo, of appeal.

4. Reliance is placed on a decision of a F. B. of this Ct. in Shahzadi Begum v. Alakh Natht; 57 ALL. 988: (A.I.R. (22) 1935 ALL. 620 F.B.). The three points reld. to the F. B. for decision were (1) whether an appeal lies under Clause 10 of the Letters Patent from the order passed by a single Judge Under Section 5, Limitation Act, refusing to extend the time for filing an appeal, (2) whether in spite of an order rejecting the appln. for leave to appeal in forma pauperis, an appeal is deemed to be still

pending so long as it is not rejected for being insufficiently stamped or is dismissed on the ground of limitation, & (3) whether a single Judge has jurisdiction to reject a memo. of appeal on the ground of deficiency in the amount of C. F. paid, or dismiss it on the ground of limitation, when the memo. of appeal is not separately filed out merely accompanies the appln. for leave to appeal in forma pauperis.

5. Dealing with the third question, Sir Shah Mohammad Sulaiman C. J. is reported to have said as follows:

"Where, however, copies of the decree & the judgment are not filed, it is impossible to regard the memo. of appeal as constituting a complete appeal in itself. In such an event no appeal has really been preferred, but only an appln. for leave to appeal has been made. If that appln. is granted, then there are no further requisites & the appct. would not be called upon to furnish copies of the decree & the judgment."

Reliance is placed on these observations & it is urged that it is not necessary to file copies of the decree & the judgment; & if the appln. is granted, then nothing further has to be done by the appct. There is obviously some error. If the appln. for leave to appeal in forma pauperis is granted & the appct. has not filed copies of the judgment & the decree, there is no appeal before the Ct. which can be entertained. The learned Chief Justice could not have meant that the appct. would not be called upon to furnish copies of the judgment & the decree if the appln. is granted. It is also not clear that, in that case, within what period of limitation, after the appln. is granted, can an appeal be filed. Article 170 provides for appln. for leave to appeal as a pauper, & the period of limitation is 30 days from the date of "the decree appealed from." The words 'appealed from' are significant & they mean that the appln. for leave to appeal, is to admit an appeal which is being filed against the decree and it is, therefore, necessary that the appln. for leave to appeal which must be accompanied by the memo. of appeal must also be accompanied by copies of the judgment & the decree appealed from Article 156, Limitation Act, provides for a regular appeal, & for that, the period of limitation is 90 days from the date of the decree or the order appealed from. The suggestion of the learned counsel for the opposite party is that the appln. for leave to appeal in forma pauperis must be filed within 30 days & the regular appeal must be filed in accordance with the provisions of Article 156 within 90 days, but an appln for leave to appeal under Order 44 may not be decided within the period of 90 days from the date of the decree or order appealed from. The practice of this Ct. has always been to insist on the memo. of appeal being accompanied by copies of the judgment & the decree.

6. We are satisfied that this is a fit case where the delay should be condoned. We grant the appln. Under Section 5, Limitation Act, but make no order as to costs.

7. After we had dictated the above judgment & while it Was under signature we found that in a F.B. decision of this Ct. *Bechi v. Ahsan Ullah Khan*, 12 ALL. 461 : (1890 A. W. N 149 F.B.), the question as to what was the time requisite for obtaining a copy Under Section 12, Limitation Act, arose for consideration in an appln. for leave to appeal in forma pauperis, for which Article 170 prescribed a limitation of only thirty days. It is clear from that decision that the appct. in an appln. for leave to appeal in forma pauperis has to obtain copies of judgment & decree & file the same. Section 5,

Limitation Act (XV [15] of 1877) then in force was not applicable to an appln. for leave to appeal in forma pauperis. That Act was replaced by the present Act IX [9] of 1908, which extended the provisions of Section 5 to such applns. also.