Ramlal, Motilal And Chhotelal vs Rewa Coalfields Ltd on 4 May, 1961

Equivalent citations: 1962 AIR 361, 1962 SCR (3) 762, AIR 1962 SUPREME COURT 361, 1961 ALL. L. J. 815, 1961 2 SCJ 556, 1962 JABLJ 385, 1962 2 SCR 762, 1962 MPLJ 602

Author: P.B. Gajendragadkar

Bench: P.B. Gajendragadkar, K.N. Wanchoo

PETITIONER:
RAMLAL, MOTILAL AND CHHOTELAL

Vs.

RESPONDENT:
REWA COALFIELDS LTD.

DATE OF JUDGMENT:
04/05/1961

BENCH:
GAJENDRAGADKAR, P.B.
BENCH:
GAJENDRAGADKAR, P.B.
WANCHOO, K.N.

CITATION:
1962 AIR 361 1962 SCR (3) 762
CITATOR INFO :
R 1968 SC 222 (4)
R 1972 SC 749 (29)
R 1988 SC 897 (7)

ACT:
Limitation-Condonation of delay in filing appeal-Period for which delay to be explained Indian Limitation Act, 1908 (Act IX of 1908) s. 5.

HEADNOTE:
In an application under s.5 of the Indian Limitation Act for condonation of one day's delay in filing an appeal, the question arose whether the appellant had to explain his conduct during the whole period prescribed for filing the appeal or he has to explain the delay between the last day

for filing the appeal and the date on which the appeal was actually filed. Section 5 of the Limitation Act lays down that an appeal may be admitted after the period of limitation if the appellant shows sufficient cause for not preferring the appeal "within such period".
Held, that it would be irrelevant to invoke general considerations such as diligence of the appellant in construing the words of s.5. The expression "within such period" does not mean during such period and the failure of the appellant to account for his non-diligence during the whole period of limitation does not disqualify him from praying for condonation of delay. In showing sufficient cause for condoning the delay the appellant has to explain the whole of the delay covered by the period between the last day of limitation and the date on which the appeal was actually filed.
Krishna v. Chattappan, (1890) I.L.R. 13 Mad. 267, referred to.
Karalicharan Sarma v. Apurbakrishna Bajpeyi, (1931) I.L.R. 58 Cal. 549, approved.
Kedarnath v. Zumberlal A.I.R. 1916 Nag. 39 and Jahar Mal v. G. M. Pritchard A.I.R. 1919 Pat. 503, disapproved.
Ram Narain Joshi v. Parmeshwar Narain Mehta (1902) L. R. 30 I.A. 20, not applicable.
Indar Singh v. Kanshi Ram (1917) L. R. 44 T. A. 218, referred to.

JUDGMENT:

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 276 of 1958. Appeal from the judgment and decree dated August 6, 1955, of the, Judicial Commissioner's court, at Rewa, V. P. in First Civil Appeal No. 16 of 1955.

S. N. Andley, Rameshwar Nath and P. L. Vohra, for the appellants.

D. N. Pathak, R. Mahalingier and B. C. Mishra, for the respondent.

1961. May 4. The Judgment of the Court was delivered by GAJENDRAGADKAR, J.-The short question which falls to be considered in this appeal relates to the construction of s. 5 of the Indian Limitation Act IX of 1908. It arises in this way. The respondent Rewa Coalfields Limited is a registered company whose coal-mines are situated at Burhar and Umaria. Its registered office is at Calcutta. The appellant is a firm, Chaurasia Limestone Company, Satna, Vindhya; Pradesh, by name and the three brothers Ramlal, Motilal and Chhotelal are its partners. The appellant prepares and deals in limestone at Maihar and Satna and for the use in their lime-kilns it purchased coal from the respondent's coal-mines at Umaria by means of permits issued to it by Coal Commissioner Calcutta. According to respondent's case the appellant purchased from it 3,307 tons of coal at the rate of Rs. 14-9-0 per ton between January 1952, and March 1953. The price for this coal was Rs. 48,158-4-0.

Since the appellant did not pay the price due from it the respondent filed the present suit in-the Court of the District Judge, Umaria, and claimed a decree for Rs. 52,514-14-0 including interest accrued due on the amount until the date of the suit.

A substantial part of, the respondent's claim was disputed by the appellant. It was urged by the appellant in its written statement that the amount claimed by the respondent had been arbitrarily calculated and that for a substantial part of the coal purchased by the appellant from the respondent due price had been paid. The appellant pleaded that for some time past it had stopped purchasing coal 'from the respondent and it was obtaining its supplies from Messrs Sood Brothers, Calcutta, to whom payments for the coal supply had been duly made. The appellant admitted its liability to pay Rs.7,496-11-0 and it expressed its readiness and willingness to pay the said amount.

On these pleadings the learned trial judge framed seven issues. It appears that on the date when the respondent led its evidence and the appellant's turn to lead its evidence arrived an application for adjournment was made on its behalf to produce additional evidence which was granted on condition that the appellant should pay to the respondent Rs. 200/- as costs. On the subsequent date of hearing, however, the appellant did not appear nor did it pay costs to the respondent as ordered. That is why the trial Court proceeded ex-parte against the appellant. On the issues framed trial Court made findings in favour of the respondent in the light of the evidence adduced by the respondent and an ex-parte decree was passed against the appellant to the tune of Rs. 52,535-7-0 with proportionate costs. The appellant was also ordered to pay interest at 6% per annum from October 6,1953, which was the date of the suit until the date of payment. This decree was passed on November 9, 1954.

Against this decree the' appellant preferred an appeal in the Court of the Judicial Commissioner, Vindhya Pradesh, Rewa, on February 17, 1955 (Appeal No. 16 of 1955). The main contention raised by the appellant in this appeal was that the ex-parte decree should be set aside and the case remanded to the trial Court with the direction that the appellant should be allowed to lead its evidence and the, case disposed of in accordance with law in the light of the said evidence. On February. 19, 1955, the appellant filed an application under s. 5 of the Limitation Act and prayed that one day's delay committed by it in filing the appeal should be condoned because Ramlal, one of the partners of the appellant's firm, who was in charge of the limitation., fell ill on February 16, 1955, which was the last date for filling the appeal. This application was supported by an affidavit and a medical certificate showing that Ramlal was ill on February 16, 1955. The learned Judicial Commissioner, who heard this application, appears to have accepted the appellant's case that Ramlal was ill on February 16 and that if only one day's delay bad to be explained satisfactorily by the appellant his illness would constitute sufficient explanation; but it was urged. before him by the respondent that the appellant bad not shown that its partners were diligent during the major portion of the period of limitation allowed for appeal, and since they put off the filing of the appeal till the last date of the period of Limitation the illness of Ramlal cannot be said to be sufficient cause for condoning the delay though it was only one day's delay. On the other hand, the appellant urged that it had a right to file the appeal on the last day and so the. delay of one day which it was required to explain by sufficient reason had been satisfactorily explained. The learned-Judicial Commissioner, however, accepted the plea raised by the respondent and in substance, refused to

excuse delay on the ground that the appellant's partner had showed lack of diligence and negligence during the *hole of the period of Limitation allowed for the appeal. It is on this ground that the application for condonation of delay was rejected and the appeal was dismissed on August 6, 1955.

The appellant then applied to the Judicial Commissioner for a certificate and urged that on the question of construction of s. 5 of the Limitation Act there was a conflict of judicial opinion' and so the point decided by the Judicial Commissioner was one of general importance. This argument was accepted by the- Judicial Commissioner and so a certificate of fitness has been issued by him under Art. 133 of the Constitution. It is with this certificate that the appellant has come to this Court, and the only point which has been urged on its behalf is that the Judicial Commissioner was in error in holding that in determining the question as to whether sufficient cause bad been shown within the meaning of s. 5 of the Limitation Act it was necessary for the appellant to explain his conduct during the whole of the period prescribed for the appeal. Section 5 of the Limitation Act provides for extension of period in certain cases. It lays down, inter alia, that any appeal may be admitted after the period of limitation prescribed therefore when the appellant satisfies the Court that he had sufficient cause for not preferring the appeal within such period.' This section raises two questions for consideration. First is, what is sufficient cause; and the second, what is the meaning of the clause "within such period"? With the first question we are not concerned in the present appeal. It is the second question which has been decided by the Judicial Commissioner against the appellant. He has held that "within such period" in substance means during the period prescribed for making the appeal. In other words, according to him, when an appellant prefers an appeal beyond the period of limitation prescribed he must show that he acted diligently and that there was some reason which prevented him from preferring the appeal during the period of limitation prescribed. If the Judicial Commissioner had held that "within such period" means "the period of the delay between the last day for filing the appeal and the date on which the appeal was actually filed"

> he would undoubtedly have come to the conclusion that the illness of Ramlal on February 16 was a sufficient cause. That clearly appears to be the effect of his judgment. That is why it is unnecessary for us to consider what is "a sufficient cause" in the present appeal. It has been urged before us by Mr. Andley, for the appellant, that the construction placed by the Judicial Commissioner on the words "within such period" is erroneous. In construing s. 5 it is relevant to bear in mind two important considerations. The first consideration is that the expiration of the period of limitation prescribed for making an appeal gives rise to a right in favour of the decree-holder to treat the decree as binding between the parties. In other words, when the period of limitation pres- cribed has expired the decree-holder has obtained a benefit under the law of limitation to treat the decree as beyond challenge, and this legal right which has accrued to the decree-holder by lapse of time should not be lightheartedly disturbed. The other consideration which cannot be ignored is that if sufficient cause for excusing delay is shown discretion is given to the Court to condone delay and admit the appeal. This discretion has been deliberately conferred on the Court in order that judicial power and discretion in that behalf should be exercised to advance substantial justice. As has been observed by the Madras High Court in Krishna v. Chattapan (1) "s. 5 gives the Court a discretion which in respect of

> jurisdiction is to be exercised in the way in which judicial power and discretion ought to be exercised upon principles which are well understood; the words "sufficient cause' receiving a liberal construction so as to advance substantial justice when no negligence nor inaction nor want of bona fide is imputable to the appellant."

Now, what do the words "within such period" denote ? It is possible that the expression ',within such period" may sometimes mean during such period. But the question is:

> Does the context in which the expression occurs in s. 5 justify the said interpretation ? If the limitation Act or any other (1) (1890) J.L.R. 13 Mad. 269.

appropriate statute prescribes different periods of limitation either for appeals or applications to which s. 5 applies that normally means that liberty is given to the party intending to make the appeal or to file an application to act within the period prescribed in that behalf. It would not be reasonable to require a party to take 'the necessary action on the very first day after the cause of action accrues. In view of the period of limitation prescribed the party would be entitled to take its time and to file the appeal on any day during the said period and so prime facie it appears unreasonable that when delay has been made by the party in filing the appeal it should be called upon to explain its conduct during the whole of the period of limitation prescribed. In our opinion, it would be immaterial and even irrelevant to invoke general considera- tions of diligence of parties in construing the words of s.

5. The context seems to suggest that "within such period"

> means within the period which ends with the last day of limitation prescribed. In other words, in all cases falling under s. 5 what the party has to show is why he did not file an appeal on the last day of limitation prescribed. That may inevitably mean that the party will have to show suffi- cient cause not only for-not filing the appeal on the last day but to explain the delay made thereafter day by day. In other words, in showing sufficient cause for condoning the delay the party may be called upon to explain for the whole of the delay covered by the period between the last day prescribed for filing the appeal and the day on which the appeal is filed. To hold that the expression "within such period" means during such period would in our opinion be repugnant in the context. We would accordingly hold that the learned Judicial Commissioner was in error taking the view that the failure of the appellant to account for its non-diligence during the whole of the period of limitation prescribed for the appeal necessarily disqualified it from praying for the condonation of delay, even though the delay in question was only for one day; and that too was caused by the party's illness.
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> This question has been considered by some of the High Courts and their decisions show a conflict on the point. In Karalicharan Sarma v. Apurbakrishna Bajpeyi(2) it appeared that the papers for appeal were handed over by the appellant to his advocate in the morning of the last day for filing the appeal. Through pressure of urgent work the advocate did not look into the papers till the evening of that day

when he found that was the last day. The appeal ",as filed the next day. According to the majority decision of the Calcutta High Court, in the circumstances just indicated there was sufficient cause to grant the appellant an extension of a day under s. 5 of the Limitation Act because it was held that it was enough if the appellant satisfied the Court that for sufficient cause he was prevented from filing the appeal on the last day and his action during the whole of the period need not be explained. This decision is in favour of the appellant and is in accord with the view which we are inclined to take.

On the other hand, in Kedarnath v. Zumberlal(3) the Judicial Commissioner at Nagpur has expressed the view that an appellant who wailfully leaves the preparation and presentation of his appeal to the last day of the period of limitation prescribed therefore is guilty of negligence and is not entitled to an extension of time if some unexpected or unforeseen contingency prevents him from filing the appeal within time. According to this decision, though the period covered between the last day of filing and the day of actual filing may be satisfactorily explained that would not be enough to condone delay because the appellant would nevertheless have to how why he waited (2) (1931)I.R.L 58 Cal 549, (3) A.I.R. 1916 Nag, 39 until the last day. In coming to this conclusion the Judicial Commissioner has relied substantially on what he regarded as general considerations. "This habit of leaving things to the last moment", says the learned judge, "has its origin in laxity and negligence, and in my opinion, having regard to the increasing pressure of business in the law Courts and the many facilities now available for the punctual filing of suits, appeals and applications therein, it is high time that litigants and their legal advisers were made to realise the dangers of the procrastination which defers the presentation of a suit, appeal or application to the last day of the limitation prescribed therefore". There can be no difference of opinion on the point that litigants should act with due diligence and care; but we are disposed to think that such general consideration can have very little relevance in construing the provisions of s. 5. The decision of the Judicial Commissioner shows that be based his conclusion' more on this a priori consideration and did not address himself as he should have to the construction of the section itself. Apparently this view has been consistently followed in Nagpur.

In Jahar Mal v. G. M. Pritchard (4) the Patna High Court has adopted the same line. Dawson Miller, C.J., brushed aside the claim of the appellant for condonation of delay on the ground that ',one is not entitled to put things off to the last moment and hope that nothing will occur which will prevent them from being in time. There is always the chapter of accidents to be considered, and it seems to me that one ought to consider that some accident or other may happen which will delay them in carrying out that part of their duties for which the Court prescribes a time limit and if they choose to rely upon everything going absolutely smoothly and wait till the last moment. I think they have only themselves to blame if they should find that some (4) A.I.R. 1919 Pat.503.

thing has happened which was unexpected, but which ought to be reckoned and are not entitled in such circumstances to the indulgence of the court." These observations are subject to the same comment that we have made about the Nagpur decision(3).

It is, however, necessary to emphasise that even after sufficient cause has been shown a party is not entitled to the condonation of delay in question as a matter of right. The proof of a sufficient cause is a condition precedent for the exercise of the discretionary jurisdiction vested in the Court by s. 5. If sufficient cause is not proved nothing further has to be done; the application for condoning delay has to be dismissed on that ground alone. If sufficient cause is shown then the Court has to enquire whether in its discretion it should condone the delay. This aspect of the matter naturally introduces the consideration of all relevant facts and it is at this stage that diligence of the party or its bona fides may fall for consideration; but the scope of the enquiry while exercising the discretionary power after sufficient cause is shown would naturally be limited only to such facts as the Court may regard as relevant. It cannot justify an enquiry as to why the party was sitting idle during all the time available to it. In this connection we may point out that considerations of bona fides or due diligence are always material and relevant when the Court is dealing with applications made under s. 14 of the Limitation Act. In dealing with such applications the Court is called upon to consider the effect of the combined provisions of ss. 5 and 14. Therefore, in our opinion, considerations which have been expressly made material and relevant by the provisions of s. 14 cannot to the same extent and in the same manner be invoked in dealing with applications which fall to be decided only under s. 5 without reference to s. 14. In the present case (3) A.I.R. 1916 Nag. 39.

there is no difficulty in holding that the discretion should be exercised in favour of the appellant be cause apart from the general criticism made against the appellant's lack or diligence during the period of limitation no. other fact had been adduced against it. Indeed, as we have already pointed out, the learned Judicial Commissioner rejected the ap- pellant's application for condonation of delay only on the ground that it was appellant's duty to file the appeal as soon as possible within the period prescribed, and, that in our opinion, is not a valid ground.

It now remains to refer to two Privy Council decisions to which our attention was drawn. In Ram Narain Joshi v. Parmeshwar Narain Mehta (5), the Privy Council was dealing with a case where on August 9, 1895 the High Court bad made an order that the appeal in question should be transferred to the High. Court under s. 25 of the Code of Civil Procedure and heard along with another appeal already pending there. In making this order the High Court had given liberty to the respondent to make his objections, if any, to the said transfer. On September 16, 1895 a petition was filed on behalf of the appellant objecting to the said transfer; and the' question arose whether sufficient cause had been shown for the delay made by the party, between August 9, 1895 to September 16, 1895. The decree under appeal had been passed on June 25, 1894 and the appeal against the said decree had been presented to the District Judge on September 1894. It would thus be seen that the question which arose was very different from the question with which we are concerned; and it is in regard to the delay made between August 9, 1895 to September 16, 1895 that the Privy Council approved of the view taken by the High Court that the said delay had not been satisfactorily explained. We do not see how this decision can assist us in interpreting the provisions of s. 5.

(5) (1902) L.R. 30 I.A. 20.

The next case on which reliance has been placed by the respondent is Bri Indar Singh v. K anshi Ram (6). The Principal point decided in that had reference to 8. 14 read with 8. 5 of the Limitation

Act, 1908; and the question which it was whether the time occupied by an application in (food faith for review, although made upon a mistaken view of the law, should be deemed as added to the period allowed for presenting an appeal. As we have already pointed out, when the question of limitation has to be considered in the light of the combined operation of ss. 14 and 5 of the Limitation Act the conditions expressly imposed by s. 14 have to be satisfied. It would, however, be unreasonable to suggest that the said conditions must to the same extent and in the same manner be taken into account in dealing with applications falling under s. 5 of the Limitation Act. It appears that the provisions of s. 5 in the present Limitation Act are substantially the same as those in s. 5

(b) and s. 5, 1 paragraph 2, of the Limitation Acts of 1871 and 1877 respectively. Section 5A which was added to the Limitation Act of 1877 by the amending Act VI of 1892 dealt with the topic covered by the explanation to s. 5 hi the present Act. The explanation provides, inter alia, that the fact that the appellant was misled by any order, practice or judgment of the High Court in ascertaining or computing the prescribed period of limitation 'may be sufficient cause within the meaning of s. 5. The effect of the explanation is that if the party who has applied for extension of period shows that the delay was due to any of the facts mentioned in the explanation that would be treated as sufficient cause, and after it is treated as sufficient cause the question may then arise whether discretion should be exercised in favour of the party or not. In the cases to which the explanation applies it may be easy for the Court to decide, that the dis-

(6) (1917) L.R. 44 I.A. 218.

cretion should be exercised in favour of the party and delay should be condoned. Even so, the matter is still one of discretion. Under s. 5A of the Act of 1877, however, if the corresponding facts had been proved under the said section there a pears to have been no discretion left in the Court cause the said section provided, inter alia, that whenever it was shown to the satisfaction of the Court that an appeal was presented after an expiration of the period of the limitation prescribed owing to the appellant having been misled by any order, Practice or judgment of the High Court of the Presidency, Province or District, such appeal or application, if otherwise in accordance with law, shall for all purposes be deemed to have been presented within the period of limitation prescribed therefore. That, however, is a distinction which is not relevant in the present appeal.

In the result the appeal is allowed, the delay of one day made in filing the appeal is condoned, and the case sent back to the Court of the Judicial Commissioner for disposal on the merits in accordance with law. In the circumstances of this case the appellant should pay the respondent the costs of this Court. Costs incurred by the parties in the Court of the Judicial Commissioner so far will be costs in the appeal before him.

Appeal allowed.