Supreme Court of India
Shew Bux Mohata And Another vs Sm. Tulsimanjari Dasi And Another on 29 March, 1961
Equivalent citations: 1961 AIR 1453, 1962 SCR (1) 643
Author: P Gajendragadkar
Bench: Gajendragadkar, P.B.

PETITIONER:
SHEW BUX MOHATA AND ANOTHER

Vs.

RESPONDENT:
SM. TULSIMANJARI DASI AND ANOTHER

DATE OF JUDGMENT:
29/03/1961

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

CITATION:
1961 AIR 1453 1962 SCR (1) 643

ACT:
Practice-Security for costs-Appeal to Supreme Court-Certificate granted by High Court -Power of High Court to extend time-Code of Civil Procedure, 1908 (Act 5 of 1908), O. 45, rr. 7, 10, 11-Supreme Court Rules, 1950, O. XII, r. 3.

HEADNOTE:
On an application made by the appellant, the Calcutta High Court granted a certificate on May 18, 1956, enabling him to appeal to the Supreme Court against the judgment and decree of the High Court. Under 0. 45, r. 7(1)(a), of the Code of Civil Procedure, 1908, the appellant had to deposit the security amount for costs of the respondent within ninety days or such further period, not exceeding sixty 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, whichever was the later date. Being unable to deposit
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the amount on the due date, the appellant filed an application on July 4, 1956, before the High Court praying that the amount tendered by him be accepted after condoning the delay, but the High Court rejected it on the ground that

according to the uniform current of decisions of that Court it had no jurisdiction to extend the time for depositing the amount.
Held, that reading 0. 45" r. 7, of the Code of Civil Procedure, 1908, along with the other relevant provisions Of the said Order, a High Court has jurisdiction to extend time for furnishing security under the rule, and that the decisions of the Calcutta High Court to the contrary are erroneous.
Order XII, r. 3, of the Supreme Court Rules, 1950, expressly recognises and gives jurisdiction to the High Courts to extend the time for furnishing the security in a proper case.
Raja Kumar Govind Narayan Singh and others v. Shamlal Singh and others, (1934) 39 C.W.N. 65 1 and Akimuddin Chowdhury v. Fateh Chand Mahesri & others, (1939) 44 C. W. N. 920, disapproved.
Roy Jyotindranath Chowdhury & Ors. v. Rai Prasanna Kumar Banerjee Bahadur, (1906) 11 C.W.N. I 104, Harendra Lal Choudhry v. Sm. Hari Dasi Debei, (1909) 14 C.W.N. 420, Nilkanth Balwant Natu & Ors. v. Shri Satchidanand Vidya Narsinha Bharati & Ors., (1927) I.L.R. 51 Bom. 430, Bishnath Singh & Ors. v. Balwant Rao Naik Kalia & Ors., I.L.R. [1939] All 549, Ismail Piperdi v. Momin BiBi & Ors, [1939] Rangoon L.R. 668, Lachmeshway Prasad Shukul v. Girdhari Lal Choudhuri, (1940) I.L.R. 19 Pat. 123, Ghulam Rasul v. Ghulam Qutabud-din, (1942) I.L.R.23 Lah.447, Gulam Hussain v. Mansurbeg & Ors., I.L.R. [1952] Nag. 406 and Thota Pitchaiah
JUDGMENT:

Andhra 55, approved.

& CIVIL APPELLATE JURISDICTION: Civil Appeal No. 34 of 1958. Appeal by special leave from the order dated July 6, 1956, of the Calcutta High Court in appeal to the S. C. No. 32 of 1955.

N. C. Chatterjee and D. N. Mukherjee, for the appellants. Syamdas Bhattacharya and S. N. Mukherjee, for the respondents.

1961. March 29. The Judgment of the Court was delivered by GAJENDRAGADKAR, J.-The short question of law which arises in this appeal is whether the Calcutta High Court had jurisdiction to extend the time for furnishing security for costs of the respondents under 0. 45, r. 7, of the Code of Civil Procedure. The Calcutta High Court has held that it had no jurisdiction to extend time as prayed for by the appellants, and so the certificate already granted by it to the appellants to appeal to this Court against its own decree has been cancelled. The order canceling the said certificate has given rise to this appeal by special leave; and so the only question which we are ca. led upon to consider is one of construing 0. 45, r. 7, of the Code as well as 0. XII, r. 3, of the Supreme Court Rules.

The relevant facts leading to the present controversy are not in dispute. The appellants had instituted a suit (No. 73 of 1944) in the First Additional Court of the Subordinate Judge of 24 Parganas against the six respondents. In this suit they claimed a declaration of title to the immovable property in question and prayed for recovery of possession of the said property together with mesne profits. The learned trial judge decreed the suit on March 20, 1948. Two appeals were then filed against the said decree by two sets of respondents (Appeals Nos. 111 of 1948 and 135 of 1948). Of these two appeals Appeal No. 135 of 1948 was dismissed but Appeal No. III of 1948 was partly allowed and the decree passed in favour of the appellants granting possession and mesne profits to the appellants against respondent 3 was set aside. Thereupon the appellants applied for and obtained a certificate from the Calcutta High Court to enable them to appeal to this Court. The decree under appeal was one of reversal and the valuation of the subject-matter of the dispute both in the trial court and in the intended appeal before this Court exceeded the statutory limit prescribed in that behalf and so the appellants 'were in fact entitled to a certificate under Art. 133 (1)(a) of the Constitution. Accordingly a certificate was issued on May 18, 1956. The last date for the deposit of the security amount of Rs. 2,500 and the printing cost of Rs. 1,184 was June 29, 1956. According to the appellants owing to circumstances over which they had no control they could not deposit he said two amounts on the due date. Consequently in July 4, 1956, they filed an application before the High Court praying that the requisite amounts tendered by them be accepted after condoning the delay made by them in the payment of the said amounts. This application was rejected on the ground that according to the uniform current of decisions in the said Court it had no jurisdiction to extend the time for depositing the amount of security. It is against this order that the appellants have come to this Court by special leave.

O. 45, r. 7, of the Code occurs in the Chapter dealing with appeals to the Supreme Court, and it deals with the security and deposit which are required to be furnished and made on grant of certificate to a party intending to prefer an appeal to this Court. 0. 45, r. 7(l)(a), provides that where the certificate is granted the applicant shall, within ninety days or such further period, not exceeding sixty 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, whichever is the later date, furnish security in cash or in Government Securities for the costs of the respondent. The word "within ninety days or such further period not exceeding sixty days" which occur in the first part of the rule have been added by Act 26 of 1920 in substitution for the words "six months" which were originally enacted in the said rule. It is common ground, and indeed it is not disputed, that prior to the amendment made in 1920 High Courts had jurisdiction to extend time for furnishing security for cogent and satisfactory reasons. In Burjore and Bhawani Pershad v. Mussumat Bhagana (1) the Privy Council had held, agreeing with the view taken by the Full Bench of the Calcutta High Court that the words in s. 602 of the Code of 1877 (Act X of 1877), in regard to extending time for giving security in appeal were directive only and there was jurisdiction in the High Court to grant extension of time for cogent reason. In other words, the time of six months prescribed by the (1) [1883] L.R. 11 I.A. 7.

statute could not be departed from without cogent reason. As a result of this decision under the provisions of 0. 45, r. 7, as they stood until the amending' Act 26 of 1920 was passed, all the High Courts consistently exercised their jurisdiction in the matter of furnishing securities and extended

time where they were satisfied that there was a proper and valid reason to do so. The question which arises for our decision is whether by the amendment made in 1920 this position has been altered.

There can be no doubt that the object of the amendment was to expedite the final decision of the appeals which were taken before the Privy Council, and so the restrictive words have now been introduced whereby the period prescribed by the first part of the rule can. not be extended beyond 150 days; but, does the use of these restrictive words indicate that there is no jurisdiction in the High Courts to extend the period for a sufficient cause ? Having regard to the fact that even before the amendment the period of six months had been indicated it seems somewhat difficult to hold that by restricting the period to 150 days by the use of the restrictive words the Legislature had intended to take away the preexisting jurisdiction of the High Courts to extend the period for a reasonable cause. The jurisdiction to enlarge the period for a good cause shown could not have been intended to be taken away by implication merely by the use of the restrictive clause introduced in the amendment. Besides, it is significant that even after the amendment there is no specific provision which provides for the effect of failure to comply with 0. 45, r. 7. Rule 8 deals with cases where security has been furnished and deposit made, and it provides that on the security being furnished and deposit made the Court shall declare the appeal admitted, give notice thereof to the respondent, transmit to the Supreme Court the record, as therein provided, and give to either party one or more authenticated copies as specified. There is no rule which prescribes the consequence of non-compliance with the order made under r. 7. Failure to make this provision is not without significance because r. 11 expressly provides for the effect of failure to comply with the order made under r. 10. In other words, where the Court makes an order calling upon the appellant to furnish within a time to be fixed by it other and sufficient security, or to make within like time the required payment, and the appellant fails to comply with the said order, r. 11 expressly provides that on such failure of the appellant the proceeding shall be stayed and the appeal shall not proceed without an order in that behalf of the Supreme Court and in the meantime execution of the decree appealed from shall not be stayed. It would thus be seen that where the Legislature intended that failure to comply with a specific order should lead to the consequence of a specific result it has made an appropriate provision in that behalf, and so failure to make any such provision in regard to the consequence of non- compliance with the order made under r. 7 may suggest that the jurisdiction of the Court to extend time was not intended to be taken away. Since it is open to the Court to extend time, the Legislature may have thought that it should be left to the discretion of the Court to decide whether the failure to comply with its order under r. 7 should be condoned and the period extended for furnishing security, or whether the default should not be condoned and the certificate should therefore be cancelled. In our opinion, therefore, reading 0. 45, r. 7, as amended along with the other relevant provisions of the said Order it would be difficult to hold that the High Court has no jurisdiction to extend time for furnishing security under the said rule. High Courts had jurisdiction to extend time prior to the amendment of 1920 and the amendment of 1920 has made no difference in that behalf.

There is another statutory provision which leads to the same conclusion, and that is 0. XII, r. 3, of the Supreme Court Rules framed by this Court in exercise of its rule-making powers under Art. 145 of the Constitution. Rule 3 reads thus:

> "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."

This rule corresponds exactly to r. 9 of the Privy Council Rules. On a fair construction of this rule there appears to be no doubt that if a party having obtained a certificate from the High Court fails to furnish security or to make the required deposit it is open to the High Court to adopt either of two courses; it may cancel the certificate and may give directions as to the costs of the appeal and the security entered into by the appellant or it may make such further or other order as the justice of the case may require; and that clearly suggests that the High Court has jurisdiction to consider the question as to whether the justice of the case requires that the certificate already granted should not be cancelled and further time should be given to the party to furnish the security or to make the required deposit. The last clause of r. 3 refers to such further or other order as the justice of the case requires, and that must necessarily mean an order other than, and different from, the order canceling the certificate. It is true that the intention behind this rule might have been differently and better expressed but the object of the rule is plain and unambiguous and its construction presents no difficulty whatever. Failure to furnish the security or to make the deposit in time does not inevitably and in every case lead to the cancellation of the certificate. Despite the said failure some further or other order according to the justice of the case may still be passed by the Court in its discretion, and that, in our opinion, must mean an order condoning the default and granting further time to furnish the security or to make the required deposit. If this be the true position about the effect of 0. XII, r. 3, of the Supreme Court Rules it would follow that the High Courts would have jurisdiction to extend time for furnishing security even if r. 7 of 0. 45 after its amendment in 1920 had taken away the said jurisdiction. Section 112 of the Code expressly provides that nothing contained in the Code shall be deemed, inter alia, to interfere with any rules made by the Supreme Court, and for the time being in force, for the presentation of appeals to that Court or their conduct before that Court. Therefore, if 0. xII, r. 3, expressly recognises and gives jurisdiction to the High Courts to extend the time for furnishing the security or to make the deposit in a, proper case that provision would not be interfered with by r. 7 of 0. 45. That is how, apart from the provisions of r. 7 of 0. 45, we reach the conclusion that the Calcutta High Court had jurisdiction to extend time for furnishing the security in the present case. However, as we have already held -the amendment of r. 7 of O. 45 does not really take away the preexisting jurisdiction of the High Courts to extend time and so there is complete harmony between the said rule and 0. XII, r. 3, of the Supreme Court Rules.

On this question there appears to be consensus of judicial opinion in the decisions of all the High Courts in India except the Calcutta High Court which for some years past has struck a note of dissent. It is unnecessary to deal with a catena of decisions on which Mr. Chatterjee relied in support of his contentions. It would be enough merely to mention them. It appears that in some High Courts the present question was referred to a Full Bench and the decisions of the Full Bench have negatived the view which appears to have been taken by the Division Benches in the said High Courts on the earlier occasions that the High Courts had no jurisdiction to extend time (Vide: Nilkanth Balwant

Natu & Ors. V. Shri Satchidanand Vidya Narsinha Bharati & Ors. (1) (Full Bench); Bishnath Singh & Ors. v. Balwant Rao Naik Kalia & Ors. (Full Bench); Gulam Hussain v. Mansurbeg & Ors. (Full Bench); Lachmeshwar Prasad Shukul v. Girdhari Lal Chaudhuri (4) (Full Bench); Ghulam Rasul V. Ghulam Qutabud-din (5) (Full Bench); Thota Pitchaiah (1) (1927) I.L.R. 51 Bom. 430.

(3) I.L.R. (1952) Nag. 406.

(2) I.L.R. [1939] All..549.

(4) (1040) I.L.R. 19 Pat. 123.

(5) (1942) I.L.R. 23 Lah. 447.

& Or8. 'V. M. Vedanta Narasimhacharyulu & Ors. (1) (Full Bench); and Ismail Piperdi v. Momin Bi Bi & Ors. (2) (Full Bench).

Even in Calcutta it was held by the Calcutta High Court by a Full Bench in Roy Jotindranath Chowdhury & Ors. v. Rai Prasanna Kumar Banerjee Bahadur & Ors. (3) that the High Court had power to extend time as provided by s. 602 of the Code for depositing the estimated cost of translating, transcribing, indexing and transmitting to the Privy Council the records of the case under appeal, but it was added that the Court should not extend time without some cogent reason. In support of this conclusion the High Court relied upon the decision of the Privy Council in the case of Burjore and Bhawani Pershad (4). The same view was expressed by the said High Court in Harendra Lal Choudhry v. Sm. Hari Dasi Debei (5) where it was held that High Court had power to extend the time for depositing costs in Court but it ought not to do so without some cogent reasons. In reaching this conclusion the Court followed its earlier decision in the case of Roy Jyotindranath Chowdhury (3). It, however, appears that in Raj Kumar Govind Narayan Singh & Ors. V. Shamlal Singh & Ors.(6) Chief Justice Rankin and Ghose, J., took a contrary view and held that there was no jurisdiction to extend time for furnishing the security under 0. 45, r. 7, as amended in 1920. With respect, the question does not appear to have been fully argued before the Court, for the judgment does not discuss the question of construing the relevant provisions of 0. 45, r. 7 or of r. 9, of the Privy Council Rules, and indeed the earlier decisions of the Court on that point do not appear to have been cited either. Even so, this decision was subsequently followed and that led to a consistent practice in the said High Court on which the learned judges have relied in rejecting the appellant's application for extension of time in the present case. In this connection it may be relevant. to note that when this question was raised before the (1) I.L.R. [1956] Andhra 55.

(3) (1906) 11 C. W.N. 1104.

(5) (1909) 14 C.W.N. 420 (2) [1939] Rangoon L.R. 668.

(4) (1883) L.R. 111 I. A. 7.

(6) (1934) 39 C.W.N. 6511.

Calcutta High Court again in Akimuddin Chowdhury v. Fateh Chand Mahesri & Ors. (1) Chief Justice Derbyshire was referred to the Full Bench decision of the Bombay High Court in Nilkanth Balwant Natu (2) in support of the argument that there was a jurisdiction to extend time for furnishing security, but he observed that though he had great respect for the said Full Bench decision there was a contrary decision of the Calcutta High Court in the case of Raj Kumar Govind Narayan Singh(') and so he was bound to follow the said decision and conform to the practice prevailing in the Calcutta High Court. In our opinion, the practice prevailing in the Calcutta High Court since the decision of Chief Justice Rankin in the case of Raj Kumar Govind Narayan Singh (3) is not justified either by the provisions of 0. 45, r. 7, of the Code or 0. XII, r. 3, of the Supreme Court Rules. We must accordingly hold that the High Court was in error in holding that it had no jurisdiction to entertain the application made by the appellants to extend time for furnishing the security. On the view which it took the High Court naturally did not examine the merits of the appellants' case that there were sufficient and cogent reasons for condoning the delay. We would therefore allow the appeal, set aside the order passed by the High Court and remit the matter to that Court for disposal of the appellants' application in accordance with law. In the circumstances of this case there would be no order as to costs.

Appeal, allowed.

(1) [1939]44 C.W.N. 920.

(2) [1927] I.L.R. 51 Bom. 430.

(3) [1934] 39 C.W.N. 651.