

Daisy Boaz Vs Special Tahsildar (L.A.) and L.A.O. Industrial Estate, Madras

Court: Madras High Court

Date of Decision: Nov. 30, 1982

Acts Referred: Civil Procedure Code, 1908 (CPC) " Order 41 Rule 1
Limitation Act, 1963 " Section 12(3)

Citation: AIR 1983 Mad 274 : (1983) 96 LW 134 : (1983) 1 MLJ 325

Hon'ble Judges: Nainar Sundaram, J; Gokulakrishnan, J

Bench: Division Bench

Advocate: G. John Arthur, for the Appellant;

Judgement

Nainar Sundaram, J.

The claimant in C.R.O.P.No.119 of 1980 on the file of the First Additional Subordinate Judge, Chingleput, is the

appellant in the present appeal S.R.No. 115639 of 1981. The said C.R.O.P was reference under the Land Acquisition Act. The First Additional

disposed of by a common judgment as many as 17 references, bearing different C.R.O.P numbers of different claimants including the above

reference bearing C.R.O.P.No.119 of 1980 of the present appellant. The present appeal has been filed on 02-11-1981. Admittedly there are

different decree alone had been filed along with the appeal. As per the endorsements found on the certified copy of the decree in C.R.O.P 119 of

1980 filed along with the present appeal the appeal is out of time and the note of the office of this court points out that it is out of time by 43 days.

Hence, the office returned the papers requesting the counsel for the appellant to file the requisite petition to condone the delay in filing the appeal.

However, learned counsel for the appellant would take a stand that A.S.No.213 of 1982 has been preferred by another claimant earlier on 30-10-

1981 as against C.R.O.P 111 of 1980 one in the batch and the requisite printed copies of the judgment have been filed in that appeal and as per

the endorsements found on those printed copies of the common judgment, the present appeal, which is also directed against the common judgment

is within time. This has necessitated the office of this court to place the matter before us for orders.

2. We are not concerned with the dispensation of the production of the requisite printed copies of the common judgment in the present appeal for

the purpose of deciding the question s to whether the appeal as preferred by the appellant is within time or beyond time as per the endorsement

found on the certified copy of the decree in C.R.O.P 119 of 1980 which alone has been filed along with the present appeal and against which

decree alone the present appeal had been preferred. If the endorsements found on the said certified copy of the decree are taken note of the

present appeal is clearly out of time. However Mr.K.Sridhar, learned counsel for the appellant would contend that the endorsements found on the

printed copies of the common judgment filed in the other appeal A.S.No.213 of 1982 preferred by another claimant against another C.R.O.P 111

of 1980 will ensure to the benefit of the present appellant also, and if the time is calculated as per the endorsements found therein the present

appeal will be within time.

3. Leaned counsel for the appellant drew our attention to a few authorities. But in our view, they are not by themselves helpful to decide the

present question. In Aminudeen Sahib v Pyari Bi, ILR (1920) Mad 633 : AIR 1920 Mad 159 a Division Bench of this court consisting of Sir John

Valls C.J. and Krishnan J pointed out that an appellant who is required to file with his memorandum of appeal a copy of the decree appealed from,

may file a copy obtained by another party; and under S. 12(2) of the Limitation Act hereinafter referred to as the Act, he is entitled to a deduction

of time taken to obtain that copy. This is not the position in the present case. The appellant has not filed in the present appeal any copy either of the

judgment or the decree obtained by another party, so that the endorsements found therein could make the appeal filed within time, but objection is

being taken by the office on the ground that it is a copy obtained by another party and the endorsements thereon cannot be availed of by the

present appellant. Learned counsel also relied on the judgment of a Division Bench of the Patna High Court in Mt. Bibi Umtul Rasul v Ram Charan

AIR 1920 Pat 535. In the said decision, the Division Bench pointed out that one copy of the common judgment would suffice though several

appeals were filed against the same common judgment by the same person and the time for obtaining that copy will be excluded in all appeals. This

decision also does not in anyway help the appellant herein. This is not a case where different appeals have been filed by the same party against a

common judgment. The third authority relied on by the learned counsel is that of a Full Bench of this court in State of Madras Vs. Muthurethinam

and Others, . Learned counsel fairly conceded that the question which has arisen before us was not at all decided by the Full Bench. The ratio of

the Full Bench runs as follows (at p.357):-

We are of the view, in these cases that the common appellant having filed a copy of the judgment in one of the connected appeals and filed copies

of decrees in each of all the appeals, the benefit of exclusion on the basis of the endorsements of the time taken in furnishing the certified copy of

the judgment would not merely be available to the appeal in which he certified copy of the judgment was filed but would nure also to the other

connected appeals filed by the same party against the common judgment.

There are observations in the decision of the Full Bench which militate against the stand taken by the learned counsel. In the course of the

arguments before the Full Bench the discussion was sought to be widened by stating that once a certified copy of the judgment and decree

furnished the basis for exclusion under S. 12(2) and (3) of the Act, it would ensure to the benefit of not merely the appellant who had secured them

but also to other parties to the judgment appealed against, whether or not they filed appealed against, whether or not they filed appeals together or

separately on the same day or different dates. The learned Judges who constituted the Full Bench having regard to the limited scope of the

reference before them, in the light of the facts, did not think it necessary to cover that area and express their view. However, after referring to

Aminudeen Sahib v Pyrai Bi ILR (1920) Mad 633 : AIR 1920 Mad Kashibai, ILR (1907) All 265, the learned Judges indicated that they are not

inclined to think that the said authorities contribute to such a proposition.

4. Computation of time for the purpose of preferring an appeal is a matter which squarely comes within the purview of Part III of the Act S 12

speaks about the time taken for obtaining copies. That provision by itself does not lay down that copies of judgment and decree should be filed

along with the appeal or revision etc. That requirement as well as dispensation thereof have got to be gleaned from the procedural law such as Civil

P.C. and other relevant rules. That has nothing to do with and will not govern the law of limitation. Sub-secs (2) and (3) of S 12 of the of Act are

relevant and they read as follows :-

12 (2) In computing the period of limitation for an appeal or on application for leave to appeal or for revision or for review of a judgment the day

on which the judgment complained of was pronounced and the time requisite for obtaining a copy of the decree sentence or order appealed form

or sought to be revised or reviewed shall be excluded.

(3). Where a decree or is appealed from or sought to be revised or reviewed or where an application is or order the time requisite for obtaining a

copy of the judgment on which decree or order is founded shall also be excluded"".

A plain and simple reading of the above provisions conveys the meaning that they relate to an appeal or an application for leave to appeal or for

revision or for review of judgment and deduction of time taken for obtaining a copy of the judgment or decree sentence or order concerned.

Normally, the nexus for computation of time could be only between that appeal and the copy filed along with it. However the Full Bench in the

decision referred to above, dealt with a situation where several appeal were preferred from a common judgment by the same party simultaneously

on the same and construing the provisions of O. 41 R 1 of the Civil P.C. as well as S 12 (2) of the Act and by taking a liberal and practical view

on the contingencies existing in that case, expressed the ratio extracted above. We are not prepared to extend the ratio beyond that limit. There

should be a common judgment but it may cover different proceedings; the party or parties appealing should be common to all the appeals; the

different appeals should have been preferred simultaneously on the same day; requisite printed copies of the judgment could be file don one of the

different appeals and dispensation of the filing of the requisite printed copies of the judgment in the other appeals could be sought for and obtained.

Though the endorsements on the certified copies of the decree filled in the appeals out of time the appellant or appellants being the same they can

avail of the endorsements found on the requisite printed copies of the judgment filed in that appeal to bring all the appeals within the period of

limitation. If the parties are totally different and they prefer different appeals either on the same day or on different dates against the common

judgment, this rule cannot be extended to cover such a contingency the main reason being there is no common nexus between the appeals as well

as the copied filed. Equally so, even if the party or parties are the same in the different appeals and if the appeals are not preferred simultaneously

on the same day but on different dates some after the expiry of the period of limitation, we do not think that this rule could be availed of to get over

the law of limitation. The basis for spelling out the rule by the Full Bench is obvious, and that is, the party or parties being same in the different

appeals directed against the common judgment and they having been preferred simultaneously on the same day the said party or parties can avail

of the endorsements on the copies of the judgment filed in one such appeal. This rule is meant to cover only those contingencies and as we stated

above there is no warrant to extend the rule to cover a case where different appeals have been preferred by different parties and that too on

different dated although against a common judgment. In this view of the matter we are not able to sustain the submission made by the learned

counsel for the appellant to get over the question of limitation. Hence, we are of the opinion that the appeal, as it stands filed along with the certified

copy of the decree alone is beyond time, and therefore, there is a necessity to file an application to condone the delay. The office will return the

papers and it is up to the appellant to re-present the same along with the requisite petition to condone the delay.

4. Order accordingly.