

(1956) 01 AHC CK 0023

Allahabad High Court (Lucknow Bench)

Case No: Civil Miscellaneous Application No. 1053 of 1954

Om Prakash and Another

APPELLANT

Vs

Sm. Sohan Devi and Others

RESPONDENT

Date of Decision: Jan. 30, 1956

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Section 12

Citation: AIR 1956 All 435

Hon'ble Judges: Randhir Singh, J; Hari Shankar Chaturvedi, J

Bench: Division Bench

Advocate: H. Husain and H.N. Misra, for the Appellant; B.K. Dhaon, for the Respondent

Final Decision: Dismissed

Judgement

Randhir Singh, J.

The point which is before us is whether the memorandum of appeal filed by the applicants in this case was presented within limitation. An application u/s 5, Limitation Act has been made by the appellants, but the learned counsel for the appellants has argued the point of limitation without regard to the application u/s 5 inasmuch as, according to his contention, the appeal would be within time even if no benefit of Section 5, Limitation Act is given to the appellants.

2. The dates which are relevant for the decision of this point are as follows. The suit which has given rise to this appeal was decided on 8-5-1954, an application for a copy of the decree was made on 2-6-1954. The copy was ready for delivery on 24-7-1954. Another application for a copy of the judgment was made on 31-8-1954, and this copy was ready on 11-9-1954. The period of limitation for filing the appeal against the judgment was 90 days.

It is not disputed that if the period of limitation is extended by excluding the period spent in obtaining the copy of the decree, the period of limitation for appeal had not expired on 31-8-1954, when the application for a copy of the judgment was made. It

has been contended on behalf of the opposite party that in order to get the benefit of Section 12, Limitation Act, both the applications for copies of the judgment and decree should have been made within the period of limitation originally prescribed in the schedule attached to the Indian Limitation Act.

The only support in favour of this contention is, however, to be found in -- "[Mool Raj Vs. Niadar Mal \(Insolvent\) and Babu Jhuman Lal Vakil Receiver of the Property of Niadar Mal Insolvent](#), in which, although the appeal was barred absolutely, their Lordships expressed the opinion that the two applications, i.e., the application for a copy of the judgment as also of the decree, should be made simultaneously, or at any rate within the period of limitation prescribed in the schedule. This case was considered in a later Bench case of this Court in -- "[Ramzan Baksh and Others Vs. Mohammad Ishaq](#),

The learned Judges, however, did not rely on the earlier case and remarked that as the point on which the expression of opinion was made in [Mool Raj Vs. Niadar Mal \(Insolvent\) and Babu Jhuman Lal Vakil Receiver of the Property of Niadar Mal Insolvent](#), was not material for the decision of that case, the view expressed on that point need not be considered. It has been observed in [Ramzan Baksh and Others Vs. Mohammad Ishaq](#), and in some other cases of other High Courts also that there are no words in Section 12 to indicate that the application for a copy should be made within the original period of limitation in order to earn the benefit of Section 12, Limitation Act.

The Limitation Act is an Act which takes away or restricts the right to take legal proceedings and even if the language is ambiguous it should be strictly construed in favour of the right to proceed. If, therefore, there is no specific provision in Section 12 to limit the rights of a party to make an application before the period of limitation as prescribed in schedule has expired, the section cannot be interpreted in a manner so as to deprive a person of his right to file an appeal if the language of Section 12 gives him the benefit of instituting the appeal within the extended period.

The view in [Ramzan Baksh and Others Vs. Mohammad Ishaq](#), also finds support in -- "[Jadu Nandan Sahay Vs. Hanuman Sahay](#), and in the two Lahore cases, -- "Raja Ram v. Firm Nanhe Mal Lala Mal" AIR 1926 Lah 529 (1) (D) and "Ali Mahomed v. Nathu" AIR 1920 Lah 409 (E). The Peshawar Judicial Commissioner's Court and the erstwhile Oudh Chief Court also took the same view; vide -- "Gul Rahman v. Mt. Zar Jan" AIR 1936 Pesh 179 (F) and "Din Dayal v. Rameshar AIR 1915 Oudh 170 (G).

It would thus appear that the appellants would get the benefit of Section 12, Lim. Act if the second application for a copy of the decree (judgment?) was made before the extended period of limitation had expired. The memorandum of appeal was, therefore, instituted within limitation and no question of Section 5, Limitation Act, arises.