

Shaikh Md. Yacoob and Another Vs Khan Bahadur S.M. Jan and Others

Court: Calcutta High Court

Date of Decision: Nov. 13, 1967

Citation: 72 CWN 296

Hon'ble Judges: S.K. Mukherjea, J; A.N. Ray, J

Bench: Division Bench

Judgement

A.N. Ray, J.

This is an application for an order that the delay in filing the appeal be condoned and for extension of time to file the appeal

and for further orders namely, stay of operation of the order passed on 24 April 1967. The appellants are two in number. The appellants intend to

prefer an appeal against the order dated 24 April 1967. By that order, Mr. A. Salam, Barrister-at-Law was appointed as Mutwalli of the Wakf

Estate.

2. The appellants submit that they were advised by their solicitors that it was not necessary to make an application for certified copy of the order

as requisition for drawing up of the order was given. The requisition was given a day after the passing of the order. The order was not drawn up

and that is why it is said application for certified copy of the order was not made until 18 July 1967.

3. Counsel for the appellants con-tended that requisition for drawing up of the order would amount to an application for certified copy of the

order. Such a construction of the provisions contained in Chapter XXXI of the Rules of the Original Side is unacceptable. There is a clear

distinction between requisition of the drawing up of the order and application for certified copy of the order. The Limitation Act, 1963, has made

certain changes, as a result whereof, it is necessary to make an application for certified copy of the order, without such application. the time

required for obtaining certified copies of the order is not excluded from the period prescribed for limitation.

4. It is said by counsel for the appellants, that the practice on the Original Side was that the requisition was given for drawing up of the order and

there was no necessity to make a separate application for certified copy of the order.

5. The old practice has changed. The Limitation Act of 1963 has rendered it obligatory to have certified copies of the order for the purpose of

computation of the prescribed period of limitation.

6. Counsel for the appellants relied on the recent unreported decision dated 12 June 1967 in appeal in Snit No. 1569 of 1963 (Gadadhar Ghosh

Vs. Janki Nath Ghosh and Others, .) In that decision delay in preferring the appeal was condoned inasmuch as the Solicitor Shri Pasupati Nath

Ghose in an affidavit stated that relying on the practice of the Original Side. he advised his clients not to make a separate application for certified

copy of the order.

7. In the present application the affidavit of the Solicitor is of the same pattern.

The new Limitation Act has been known to lawyers for the last four years. Solicitors have been conversant with the changes in statute and also the

requirements under the Rules of the Original Side for giving requisition for drawing up of the order and for a separate application for certified copy

of the order. Apart from the case of Gadadhar Ghose, there has been no other instance of remiss in regard to making an application for certified

copy of the order until the present application.

8. Counsel for the respondents submitted that the present application was based on the judgment in Gadadhar's case. No hard and fast rule can

be laid down in regard to applications of this nature. But it is necessary to point out that lawyers are expected to notice changes in law. It cannot

be said that because there has been an order in Gadadhar's case, there should be an order in the present case. Each case is judged on its own

merits. It should be stated that any order of this nature should not serve as a guide to the profession that whenever there is an application

supported by a lawyer's affidavit that he has followed the old practice and has thereby advised his clients according to the old practice, there

should be an occasion for condonation of delay. The changes in statute will be rendered nugatory if such applications were repeated and orders

were made pursuant thereto.

In the present case, counsel for the appellants submitted that the Solicitor misled the litigant by adherence to the old practice. Counsel for the

appellants realised that the Solicitor should have been acquainted with the changes in law.

9. The present application was made at about the same time as Gadadhar Ghose's case. Time has elapsed since the order on that application.

Longer time has passed since the Limitation Act of 1963 came on the statute book. Not much inspiration should be allowed to be drawn from

such cases as mistaken advice or acquaintance with old procedure which has become effete.

10. In the special facts and circumstances of this case, I am of opinion that there should be an order for condonation of delay.

11. As to stay of operation of the order dated 24 April 1967 the rival contentions are on the one hand that there should be a stay and on the other

hand that a stay would mean continuance of the very system that was stopped by the order. It is not known when the suit would be heard. It is also

not known when the appeal would be heard. In the facts and circumstances of this case, I am of opinion that no interim order should be made for

stay of operation of the order. Hearing of the appeal should be expedited. Paper book will be filed within four weeks from date. Settlement of the

index is dispensed with on the undertaking of the Solicitor for the appellants to print in the paper book all papers and documents which were used

at the trial Court. Liberty to file printed or cyclostyled paper book. The respondents are entitled to costs of this application. Appeal will be placed

on the hearing list five weeks after filing of the paper books. There will be an order in terms of prayers (a) and (b) in the light of the observations

made above. The Memorandum is to be filed within three days on a signed copy of the minutes of this order on the undertaking of the Solicitor for

the appellants to have the order drawn up and file it. Department to act on a signed copy of the minute.

S.K. Mukherjea, J.

I agree.