(1953) 02 CAL CK 0017

Calcutta High Court

Case No: Civil Revision Case No. 427 of 1952

Kisto Chandra Sahu		APPELLANT
	Vs	
Siu Shankar		RESPONDENT

Date of Decision: Feb. 18, 1953

Acts Referred:

- Limitation Act, 1963 - Article 161, 14, 14(2), 5
- Provincial Small Cause Courts Act, 1887 - Section 17, 17(1), 17(2)

Citation: (1955) 1 ILR (Cal) 88

Hon'ble Judges: Lahiri, J; Guha, J

Bench: Division Bench

Advocate: Lala Hemanta Kumar, for the Appellant;Manindranath Ghosh, for the Respondent

Final Decision: Dismissed

Judgement

Guha, J.

In order to appreciate the various points urged before us in this Rule it is necessary to state certain fact. Opposite party No. 1 filed a suit against the present Petitioner, being suit No. 180 of I960, Small Cause Court, in the third court of the Munsif, Midnapore, claiming recovery of a sum of Rs. 188. The suit was decreed ex parte on January 30, 1951.

2. The Petitioner before us alleges that on March 9, 1951, he came to know that the decree in question was obtained by the Plaintiff-opposite party fraudulently on the deposition of two persons who had falsely personated themselves.

3. Thereupon, this Court was moved on March 12, 1951, against the judgment and decree passed in S.C.C. suit No. 180 of 1950. On April 16, 1951, the revision application before this Court was, however, allowed to be withdrawn on the ground, as stated by the Petitioner in his application before the lower court filed on April 23, 1951, that he wanted to file a review of the judgment before the Small Cause Court.

4. On April 23, 1951, an application was filed, purporting to be one u/s 17(1) of the Provincial Small Cause Courts Act, for review of the order passed on January 30, 1951. Along with that application a petition for condonation of the delay u/s 5 of the Limitation Act was also filed. On the same day the Petitioner filed before the Small Cause Court another application which is stated to be in compliance with the proviso to Section 17(1) of the Provincial Small Cause Courts Act. In other words, a draft security bond was filed with prayer for its acceptance by the court.

5. The learned Subordinate Judge, however, rejected this application for review mainly on two grounds: First he has held that the application was prima facie barred by limitation having regard to the provisions of Article 161 of the Indian Limitation Act. On the point of limitation, the learned judge held, further, that the present Petitioner was not entitled to the benefit of Section 14 of the Indian Limitation Act either, as the court was not satisfied that the applicant had prosecuted the proceeding before this Court with due diligence, or that this Court was unable to entertain the proceeding for defect of jurisdiction, or other cause of a like nature. In the opinion of the learned judge no case had been made out either u/s 5 or u/s 14 of the Indian Limitation Act. The second ground on which the application for review was rejected by the learned judge is that the proviso to Section 17(1) had not been complied with in the present case, inasmuch as the security bond which the present Petitioner had filed on April 23, 1951, had not been accepted by the court. On these preliminary grounds the learned judge rejected the review application without going into the merits of the specific case of the Petitioner that the decree, dated January 30, 1951, had been obtained on false personation.

6. On behalf of the Petitioner Mr. Lala has assailed both the grounds on which the review petition was rejected by the lower court. As regards the point of limitation Mr. Lala''s contention, briefly, is that so far as Section 14 of the Limitation Act is concerned, his client is entitled to get credit for the period between March 12, 1951 and April 16, 1951, when he was proceeding with his revision petition in a bona fide manner in this Court, though ultimately he was permitted to withdraw it on April 16, 1951, for filing a review petition in the Small Cause Court.

7. So far as the contention as regards the point of limitation is concerned, even assuming that what Mr. Lala''s client was doing in this Court between March 12 and April 16, 1951, was being done in a bona fide manner, there is some difficulty in the way of the application of Section 14 of the Limitation Act to the facts of the present case. In terms, Sub-section (2) of Section 14 of the Limitation Act does not appear to be attracted to the facts of the present case for the simple reason that there is nothing to indicate that this Court was unable to entertain the revision petition, either from defect of jurisdiction or other cause of a like nature. Mr. Lala laid stress on the phrase "other cause "of a like nature". But in the circumstances of the present case that phrase is not of much assistance to him, inasmuch as all that was done on behalf of Mr. Lala''s client in this Court was simply to withdraw the revision

petition.

8. In this connection Mr. Ghose on behalf of the opposite parties has drawn our attention to the decision in the case of Mohanlal Baheti v. Moulvi Tabizuddin Ahmed (1939) 48 C.W.N. 1074, where it was pointed out in circumstances somewhat similar to those of the present one that the time taken in prosecuting the previous suit u/s 14 of the Limitation Act could not be deducted, as there was no decision of the court on the point of jurisdiction. In the present case also there was no decision of this Court that it was unable to entertain the previous revision petition. In these circumstances on the principle laid down in the case of Mohanlal Baheti v. Maulvi Tabizuddin Ahmed (supra) we are inclined to think that we must accept the contention of Mr. Ghose to the effect that the present Petitioner was not entitled to the benefit of Section 14. On this view the application for review filed on April 23, 1951, would be hopelessly time-barred, and Section 5 of the Limitation Act would also be of no assistance to this Petitioner.

9. Assuming, however, that the Petitioner is entitled to get credit for the period between March 12 and April 16, 1951, during which he was prosecuting his abortive proceedings before this Court, it remains to be seen whether his application for review can be held to be maintainable and this brings us directly to the proviso to Section 17(2) of the Provincial Small Cause Courts Act. That proviso was amended in 1935 and the material portion of the amended proviso is as follows:

Provided that an applicant for a review of judgment shall, at the time of presenting his application, either deposit in the court the amount due from him under the decree or in pursuance of the judgment, or give such security for the performance of the decree or compliance with the judgment as the court may, on a previous application made by him in this behalf, have directed.

10. In the present case before or at the time when the application for review was filed on April 23, 1951, the decretal dues were not deposited in court. Our attention has been drawn to the fact that such deposit was made on January 17, 1952. That, however, is of little assistance to the Petitioner, inasmuch as such deposit was made long after the period of limitation and the date of deposit was also after the date of dismissal of the review application.

11. Let us turn then to the second alternative laid down in the proviso which says that at the time of presenting his application the applicant shall give such security as the court may on a previous application made by him in this behalf have directed. On a strict and literal view of this condition, the Petitioner is clearly out of court, inasmuch as he had not even tendered any security before filing the application for review on April 23, 1951. The strict view, it may be observed in passing, was followed in the case of Mohammad Ramzarv Khan v. Khubi Khan AIR (1938) (Lah.) 18. As has been pointed out before, on the same day on which the review application was filed, that is, on April 23, 1951, another application was filed. Accompanying that

application was a draft security bond and there was a prayer in the application to the effect that the bond might be accepted. It may be mentioned incidentally that in this application it was stated that the applicant had already filed a review petition. In other words, the applicant admitted that the security bond was filed after the filing of the review petition, a course which clearly does not satisfy the requirements of the proviso to Section 17(1). Even if we accept the contention that the draft security bond was filed along with the application for review, we have to examine the position whether the terms of the proviso were complied with. In our opinion, the answer should be in the negative. In the case of Kalisetti Penchalu Setti v. Poti Reddi Subbareddi ILR (1944) Mad. 194, it was held that the mere filing of a draft bond was not sufficient compliance with the provisions of Section 17 of the Provincial Small Cause Courts Act, that the draft security bond was a mere piece of paper and it could not have the effect of a security bond duly executed and registered which alone could be enforced. Even if we do not go to the extent of the principle laid down in this case, namely, that the draft security bond must be duly registered before a review application is presented, we cannot at the same time hold that a mere filing of a draft bond without obtaining an order from the court regarding its acceptance would satisfy the requirements of the proviso. The proviso uses the words "give such security "as the court may have directed". In our opinion, the mere filing of a draft bond cannot amount to giving such security as is mentioned in the proviso.

12. In the present case, as pointed out by the lower court, the security bond was not examined by the court, nor was it accepted by the court. Mr. Lala contends that so far as the present petition is concerned he has done all that he could do and that if the court did not pass any order either accepting or rejecting the draft bond filed by him on April 23, 1951, he was not to blame and he should not be penalised on this account. There is, no doubt, some force in this contention, but at the same time there is no escape from the conclusion that the mere filing of a security bond is not sufficient to satisfy the requirements of the proviso to Section 17 of the Provincial Small Cause Courts Act. It was as well the duty of the Petitioner to move the court in order to obtain an order from it regarding the acceptance of the draft security bond. It appears that in the present case the attention of the court was not drawn at the appropriate time to the draft security bond which had been filed on April 23, 1951 and no order was obtained from the court regarding that bond. The language of the proviso is specific enough. The material words are: "give such "security as the court may, on a previous application made by "him in this behalf, have directed." The filing: of some security bond, whatever may be its nature, is not enough. The security bond must be of such nature as the court may have directed and on the words of the section such direction is to be made on a previous application made by the applicant in this behalf. Again adequate stress has also to be laid on the word ''give'' which occurs in the phrase "give such security". That word is not the same as ''tender''. The mere filing of a draft security bond without or before its acceptance by

the court is not, in our opinion, sufficient to satisfy the requirements of the law on the words of the statute.

13. Mr. Lala has drawn our attention, however, to the decision in the case of Mrityunjoy Ganguly v. Bholanath Ganguly AIR (1951) (Cal.) 465. This is a Bench decision of this Court. In that case, however, it was held, as the headnote shows, that it is competent for the Small Cause Court to accept security for the performance of the decree filed, not along with the application to set aside an ex parte decree, but subsequent to it, though within thirty days of; the date of knowledge of the decree and that the date of presentation of the application in such a case is the date of the deposit of security. In our opinion, this case also is not of much assistance to Mr. Lala as will be clear from para. 5 of the judgment as reported. Paragraph 5 runs as follows:

It appears in the present case that the date of knowledge of the passing of the decree having been found (to be sic.) July 22, 1948, the security as furnished and accepted on August 20, 1948, was before the expiry of thirty days from the date of knowledge.

14. It is clear, therefore, that the security in that case was not only furnished but also accepted before the expiry of the period el limitation from the date of knowledge. In the present case, however, as has been pointed out, there was no such acceptance during the requisite period The principle of the case of Mrityunjoy Ganguly v. Bholanath Ganguly (supra), therefore, is not of assistance to Mr. Lala''s client.

15. On a consideration of these circumstances, we hold that the application for review was bound to fail first because it did not attract in terms the operation of Section 14 of the Limitation Act and secondly because the conditions laid down in the proviso to Section 17(1) of the Provincial Small Cause Courts Act were not complied with.

16. In the result, this Rule must be discharged but in the circumstances we make no order as to costs.

Lahiri, J.

17. I agree.