Provendra Mohan Sen Vs Gouri Ranjan Sarkar

Appeal from Appellate Decree No. 299 of 1956

Court: Calcutta High Court

Date of Decision: June 8, 1960

Acts Referred:
Civil Procedure Code, 1908 (CPC) â€" Order 20 Rule 7, 107(2), 2(2)#Limitation Act, 1963 â€" Article 152, 12(2)

Citation: (1961) 2 ILR (Cal) 176

Hon'ble Judges: P.N. Mookerjee, J

Bench: Single Bench

Advocate: Biswanath Bajpayee, for the Appellant;No one, for the Respondent

Final Decision: Allowed

Judgement

P.N. Mookerjee, J.
This is a short appeal, arising out of a suit for enhancement of rent and recovery of arrears of rent, including the said

enhancement. The appeal is against an order of the court of appeal below, rejecting the memorandum of appeal, filed in that court, on behalf of the

Plaintiff Appellant, on the ground that the said appeal was time-barred. The Defendant Respondent has not appeared in this Court to contest or to

oppose this appeal.

2. The judgment of the trial court was pronounced on April 38, 1955, dismissing the Plaintiff"s suit. The decree was actually signed on May 18,

1955. The Plaintiff applied for copies of the judgment and decree on June 6. 1955, and the same were ready for delivery on June 18, 1955 the

requisite folios and stamps having been supplied in due time, without any break or delay whatsoever. The appeal to the lower appellate court was

filed on July 1, 1955. and, on the 6th following, the same was rejected on the ground that it was time-barred. From this order of rejection, which,

in law, is a decree [vide Section 2(2) read with inter alia Section 107(2) of the CPC and having regard, particularly, to the nature of the order of

rejection in the instant case (vide, in this connection, Forzand Ali v. Abdul Hamid AIR [1920] Pab. 818] the present second appeal was filed on

November 21, 1955.

3. The only point in this appeal is whether the lower appellate court was right in its view that the appeal before it was filed beyond time. The

learned District Judge, in making the aforesaid order of rejection, apparently took the view that the time between the delivery of the judgment and

the signing of the decree, could not be excluded in computing limitation for the filing of the appeal. There was no dispute and no doubt also that, if

the said time was liable to be excluded, the appeal, in the instant case, before the lower appellate court, was filed quite within time. This is clear

from the dates, which have been mentioned above, as, the Appellant was, obviously, entitled, in any view of the case, to a deduction of the period

between, June 6, 1955, and Jun 18, 1955, in the matter of computation if the period of limitation for his appeal, u/s 12(2) of the Indian Limitation

Act, as time requisite for obtaining copy, as mentioned in the said section. If, however, he was not entitled to a deduction also of the period

between April 28, 1955, the date of delivery of the judgment, and May 18, 1955, the date on which the decree was signed, the appeal would

beyond time, as the starting point of limitation {vide Article 152 of the Indian Limitation Act) would have, undoubtedly, to be taken as April 28,

1950, which was the date of the judgment and which under Order XX, Rule 7 of the Code of Civil Procedure, will also he the date of the decree.

The period of 30 days, which is the period of limitation provided under the relevant article (Article 152 of the Indian Limitation Act, referred to

above) would then expire in the first instance on May 28, 1955, and if, to this, be added the period between June 6, 1955. and June 18, 1955,

winch, in any view of the case would be time requisite for obtaining copy of judgment and decree, the last date for filing the appeal would be Tune

10, 1955. If, however the period between April 28, 1955, the date of delivery of the judgment that is, the date of the decree, as aforesaid, and

May 18. 1955, the date of the signing of the decree, be liable to be excluded in the matter of the above computation the Appellant would get a

further period of 20 days, which would bring the last date for filing of appeal to June 30, 1955. which having been, admittedly, a holiday on

account of the half-yearly closing of banks, the appeal would be quite within time, it (Sic)Ad on the next day, that is, July 1, 1955, on which date, it

(Sic) actually filed in the lower appellate court.

4. The point thus arises whether, in law, the Appellant would be entitled to deduction of the period between April 28, 1955. the date of delivery of

judgment, or the date of the decree under the Code (Order XX, Rule 7) and May 18, 1955, the date of signing of the decree. In the view of the

learned District Judge, the Appellant would not be entitled to this deduction and, then, obviously, the application for copy having been made on

June 6, 1955, that is, beyond 30 days from the said date of the decree (April 28, 1955), on which date limitation would start under the relevant

Article 152, it would be at a time, when the appeal had already become time-barred, and, accordingly no further deduction would be availing or of

any help to relieve the Appellant of that bar and his appeal would be clearly beyond time. In support of the above view, the learned District Judge

has apparently relied on the several decisions, mentioned in the report of his Sheristadar, on which report, apparently, the above order of rejection

of the memorandum of appeal was passed by the learned District Judge. The cases, referred to in the aforesaid report of the Sheristadar are,

however, either distinguishable or contrary to the settled law in this Court. So far as this Court is concerned, the point is covered by authorities

starting with the Full Bench decision, reported in Beni Madhab Mitter v. Matungini Dassi ILR [1886] Cal. 104 (F.B.) which is clear authority for

the proposition that, u/s 12 Sub-section (2) of the Indian Limitation Act, in the matter of computation of the period of limitation, the time requisite

for obtaining copy of tie decree would include also the period between the delivery of the judgment [which, of course, is the date of the decree

under the Code (Order XX, Rule 7)] and the dale of the signing of the decree, as, until the decree is signed, no copy of it can be available and,

according to the said Full Bench decision, followed almost always and uniformly in this Court, that is, in numerous cases, or indeed, in all cases

with one or two exceptions, which are either distinguishable or which, at any rate, cannot prevail against the said Full Bench decision, Ã¯Â¿Â½that

period would be liable to be excluded in the matter of computation of the period of limitation u/s 12(2) of the Indian Limitation Act as time requisite

for obtaining copy of the decree. It is true that, in some of the other High Courts, [vide, in particular, the Full Bench case of the Allahabad High

Court, reported in Bechi v. Ashanulla Khan ILR [1890] All. 461 (F.B.) which is the leading authority in that behalf], a different view has been

taken, but, so far as this Court is concerned, the law is well settled and the authority of the above Full Bench. [Beni Madhab Mitter v. Matungini

Dassi (supra)] has, practically speaking, almost always been accepted and the said proposition of law, as laid down therein, has never been

doubted or dissented from by any competent authority.

5. The matter, indeed, is stare decisis in favour of the Appellant, so far as this Court is concerned, and, on that principle, if not on anything else, the

view, taken by the learned District Judge, must be held to be erroneous and this appeal should be allowed. It may also be added here that the

decision in Beni Madhab Mitter"s case (supra) although referred to before their Lordships of the Judicial Committee in 26 CWN 156 (Privy

Council) was not disapproved by them but only distinguished and was, in a sense, approved though, of course, indirectly.

6. This appeal, accordingly, succeeds; it is allowed, the decision of the learned District Judge is set aside and the case is sent back to him, with a

direction that the Appellant''s appeal before him, if otherwise in form and in order, be registered as having been filed within time and be proceeded

with according to law.

7. As there is no appearance on behalf of the Respondents in this Court, there will be no order as to costs in this appeal.