

CHANDRA BHUSHAN & ANR.

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v.

DEPUTY DIRECTOR OF CONSOLIDATION
(REGIONAL), U.P. & ORS.

December 15, 1966

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[K. SUBBA RAO, C. J., J. C. SHAH, S. M. SIKRI, V. RAMASWAMI
AND C. A. VAIDALINGAM, JJ.]

Practice and Procedure—Certiorari—Rule of practice prescribing ninety days for filing of writ—If binding rule of limitation—Constitution of India, Art. 226.

The Allahabad High Court in *Mongey v. Board of Revenue U.P.* [A.I.R. 1957 All. 47] laid down the practice that a period of ninety days should be taken as the period for application for the issue of a Writ of *Certiorari* and that time could be extended only when special circumstances were shown to exist. The appellant who had taken all the preliminary steps to file a writ petition did not file it on the ninetieth day. That day was originally a working day; but from the afternoon onwards the court and its offices were closed, without previous intimation, for the Diwali holidays. The appellant filed the petition on the re-opening of the court. The High Court dismissed the petition on the ground that the rule of practice, prescribed a binding rule of limitation and there was no explanation for not filing the petition on the ninetieth day. In appeal to this Court.

HELD : The High Court erred in exalting a rule of practice into a rule of limitation and rejecting the petition of the appellant without considering whether he was guilty of laches and undue delay. [289A-B]

A rule of practice may only indicate how discretion will be exercised by the court in determining whether having regard to the circumstances of the case, the applicant has been guilty of laches or undue delay. [288 A]

Normally this Court will not interfere with the exercise of this discretion by the High Court but the special circumstances of the present case justified a departure from the rule. [288H]

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 973 of 1965

Appeal by special leave from the judgment and decree dated March 5, 1962 of the Allahabad High Court in Special Appeal No. 43 of 1962.

B. C. Misra and D. Goburdhun, for the appellants.

C. B. Aggarwala and O. P. Rana, for respondents Nos. 1 to 3.

The Judgment of the Court was delivered by

Shah J. A revision application under s. 48 of the U.P. Consolidation of Holdings Act filed by the appellants against the order of the Settlement Officer, Consolidation, was dismissed by the Deputy Director of Consolidation, Allahabad, by order dated July 15, 1961. The appellants then moved on November 13, 1961, the High

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- A Court of Allahabad for the issue of a writ of *certiorari* quashing the orders, *inter alia*, of the Consolidation Officer and the Settlement Officer. The petition was summarily rejected by D. S. Mathur, J., observing that the period of "limitation expired on 7th November, 1961 and no explanation had been furnished why the writ petition could not be filed on November 7, 1961".
- B A special appeal against that order was dismissed by a Division Bench of the Allahabad High Court. The High Court observed that the petition was dismissed by Mathur, J., on the ground that it was filed beyond 90 days from the date of the impugned order "after excluding the time taken in obtaining a certified copy of the order and after excluding the time requisite for giving notice to the Standing Counsel under rules of the Court". The High Court further observed "that no attempt . . . had been made to explain why the petition was not moved on November 7, 1961 which was the date on which it should have been moved in accordance with the principles laid down by the" High Court. Against the order of the High Court, this appeal is preferred with special leave.
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- D The High Court of Allahabad has not framed any rule prescribing a period of limitation for filing petitions for writs of *certiorari* under Art. 226 of the Constitution. Ordinarily in the absence of a specific statutory rule, the High Court may be justified in rejecting a petition for a writ of *certiorari* against the judgment of a subordinate court or tribunal, if on a consideration of all the circumstances, it appears that there is undue delay. But the aggrieved party should have a reasonable time within which to move the High Court for *certiorari*. Sometimes it has been suggested that the remedy by *certiorari* is in the nature of that afforded by writ of error, it will not be issued, or if issued will be quashed or superseded, where, in the absence of special facts or circumstances excusing the delay, the application is not made until after the time within which a writ of error must be prosecuted has elapsed: see Ferris & Ferris—"Extraordinary Legal Remedies", p. 202. The Allahabad High Court in *Mongey v. Board of Revenue U.P. Allahabad*,⁽¹⁾ has consistently with that view laid down the practice that "writ petitions under Art. 226 of the Constitution should be filed as quickly, after the delivery of judgment, of the inferior tribunal, as possible. A period of 90 days, which is the period fixed for appeals to the High Court from the judgments of courts below, should be taken as the period for application for the issue of a writ of *certiorari*, and that time can be extended only when circumstances of a special nature, which are sufficient in the opinion of the Court, are shown to exist". But in the absence of a statutory rule the period prescribed for preferring an appeal to the High Court is a rough measure: in each case the primary question is whether the applicant has been guilty of laches or undue delay. A rule of
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practice cannot prescribe a binding rule of limitation: it may only indicate how discretion will be exercised by the Court in determining whether having regard to the circumstances of the case, the applicant has been guilty of laches or undue delay.

In the present case the order of the Deputy Director of Consolidation was made on July 15, 1961, and a petition for review of that order was rejected on September 22, 1961. The appellants had to secure certified copies of the impugned orders, and under the rules of the High Court they had to serve upon the Standing Counsel to the State of Uttar Pradesh a notice of the intention to move a petition before the High Court. Taking into consideration these two periods, the appellants could have, according to the practice of the High Court, moved the petition on November 7, 1961. But the petition was moved on November 13, 1961. D. S. Mathur J., rejected the petition being apparently of the opinion that the rule of practice prescribed a rule of limitation. The learned Judge did not consider whether on a review of the circumstances the appellants were guilty of laches or undue delay. In appeal, the High Court affirmed the order.

There are certain special circumstances which would have normally justified the Court in not insisting upon strict compliance even with its own rule of practice. Originally November 7, 1961 was declared a working day by the High Court, but by notice issued by the Court on November 7, 1961, the High Court and its offices were, without previous intimation, closed some time about mid-day for the Diwali holidays, and the Court and its offices re-opened on November 13, 1961. The petition which was intended to be filed in the High Court was sworn on October 12, 1961, and an Advocate had, it appears, been engaged by the appellants to lodge the petition, and notice as required by the rules of the High Court was served upon the Standing Counsel. There is no reason to think that the appellants would not have presented the petition on November 7, 1961 if the offices of the High Court were not closed at 1.00 P.M.

The rule which has been laid down in *Mongey's case*, (1) is at best a rule of practice, and not a rule of limitation. It is true that normally the question whether a petition under Art. 226 of the Constitution for the issue of a writ of *certiorari* had been presented without undue delay or laches is a question for the High Court to decide and this Court would not interfere with the exercise of the discretion of the High Court. But in the present case, there are special circumstances which justify departure from the rule : (i) that Mathur, J., regarded the rule of practice as a rule of limitation ; (ii) that the offices of the High Court were ordered to be closed at 1.00 P.M. on November 7, 1961, even though originally November 7, 1961 was declared a working day; and (iii) the appellants had

(1) A.I.R. 1957 All. 47.

- A completed all preliminary steps for filing the petition before November 7, 1961. These circumstances have not been considered by Mathur, J., nor have they been considered by the High Court. They appear to have exalted a rule of practice into a rule of limitation, and rejected the petition of the appellants without considering whether the appellants could be said to be guilty of laches or undue delay. It may be mentioned that apart from the ground that the petition was not presented within ninety days, there is nothing which indicates that the appellants were guilty of laches or undue delay, nor are there grounds which justified the High Court in holding that it would be unjust to permit a departure from the practice of the Court.
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- C The appeal will therefore be allowed and the order of the High Court set aside. The proceedings will be remanded to the High Court for hearing and disposal according to law. There will be no order as to costs in this Court. The costs in the High Court will be costs in the cause.

Y. P.

Appeal allowed