STATE OF UTTAR PRADESH

v.

MAHARAJ NARAIN AND OTHERS

January 30, 1968

[M. HIDAYATULLAH AND K. S. HEGDE, JJ.]

Limitation Act, 1908, *s.* 12(2)—*"time requisite" for obtaining copy of order appealed from—meaning of.*

The appellant State filed an appeal in the High Court on March 29, 1963 against the order made by the trial court on November 10, 1962 acquitting the respondents. According to the information contained in the copy of the order produced along with the Memorandum of Appeal, the appeal was filed within time. It showed that the copy was applied for on November 15, 1962 and it was ready on January 3, 1963. It was contended on behalf of the respondents that the appeal was out of time in view of the fact that the appellant had applied for and obtained two other copies of the order appealed from and if time was calculated on the basis of those copies the appeal was beyond time. In addition to the copy referred to earlier, the appellant had applied for another copy of the order appealed from on December 3, 1962, and that copy was ready for delivery on December 20, 1962. The appellant also applied for yet another copy of the same order on December 21, 1962 and that copy was made ready on the same day. It was not disputed that if the period of limitation was computed on the basis of the two later copies, the appeal was barred by limitation. The High Court accepted the respondent's contention and dismissed the appeal.

On appeal to this Court.

HELD : That the decision of the High Court under appeal did not lay down the law correctly.

The expression 'time requisite' in s. 12(2) of the Limitation Act cannot be understood as the time absolutely necessary for obtaining the copy of the order. What is deductible under s. 12(2) is not the minimum time within which a copy of the order appealed against could have been obtained. It must be remembered that s. 12(2) enlarges the period of limitation prescribed under entry 157 of Schedule I. That section permits the appellant to deduct from the time taken for filing the appeal, the time required for obtaining the copy of the order appealed from and not any lesser period which might have been occupied if the application for copy had been filed at some other date. That section lays no obligation on the appellant to be prompt in his application for a copy of the order. A plain reading of s. 12(2) shows that in computing the period of limitation prescribed for an appeal, the day on which the judgment or order complained of was pronounced and the time taken by the court to make available the copy applied for, have to be excluded. There is no justification for restricting the scope of that provision. [844 E-H]

Mathela and others v. *Sher Mohammad*, A.I.R. 1935, Lah. 682; disapproved.

Pramatha Nath Roy v. *Lee*, 49 I.A. 307 and *J. N. Surty* v. *T. S. Chettyar*, 55 I.A. 161; distinguished.

A *Panjam* v. *Trimala Reddy*, I.L.R. 57 Mad. 560; *Kunju Kesavan* v. *M. M. Philip*, A.I.R. 1953 T.C. 552; *B. Govind Raj Sewak Singh and Anr.* v. *Behuti Narain Singh*. A.I.R. 1950, All. 486 and *K. U. Singh* v. *M. R. Kachhi*, A.I.R. 1960 M.P. 140; referred to.

CRIMINAL APPELLATE JURISDICTION: Criminal Appeal No. 122 of 1965.

B Appeal from the judgment and order dated December 1, 1964 of the Allahabad High Court in Government Appeal No. 785 of 1963.

O. P. Rana, for the appellant.

J. P. Goyal and *Sobhag Mal Jain*, for the respondents.

C The Judgment of the Court was delivered by

Hegde, J. In this appeal by certificate, the only question that arises for decision is as to the true scope of the expression "time requisite for obtaining a copy of the decree, sentence or order appealed from" found in sub-s. 2 of s. 12 of the Indian Limitation Act 1908 which will be hereinafter referred to as the Act. The D said question arose for decision under the following circumstances: The respondents were tried for various offences before the learned assistant sessions judge, Farrukhabad. The said learned judge acquitted them. Against the order of acquittal the State went up in appeal to the High Court of Allahabad. The said appeal was dismissed as being barred by limitation. The E correctness of that decision is in issue in this appeal.

Item 157 of the first schedule to the Act prescribes that the period of limitation for an appeal under the Code of Criminal Procedure 1898, from an order of acuittal is three months from the date of the order appealed from. But sub-s. 2 of s. 12 provides that in computing the period of limitation prescribed for an F appeal the day on which the judgment complained of was pronounced and the time requisite for obtaining a copy of the order appealed from shall be excluded.

The memorandum of appeal was filed into court on March 29, 1963. The order appealed from had been delivered on November 10, 1962. According to the information contained in the G copy of the order produced along with the said memorandum the appeal was within time. It showed that that copy was applied for on November 15, 1962 and the same was ready on January 3, 1963.

It was contended on behalf of the respondents that the appeal H was out of time in view of the fact that the appellant had applied for and obtained two other copies of the order appealed from and if time is calculated on the basis of those copies the appeal was beyond time. In addition to the copy referred to earlier, the

appellant had applied for another copy of the order appealed from on December 3, 1962 and that copy was ready for delivery on December 20, 1962. The appellant also applied for yet another copy of the same order on December 21, 1962 and that copy was made ready on the same day. There is no dispute that if the period of limitation is computed on the basis of those copies the appeal was barred by limitation. But the point for consideration is whether the obtaining of those copies has any relevance in the matter of computing the period of limitation for the appeal.

The High Court of Allahabad accepted the contention of the respondents that in determining the time requisite for obtaining a copy of the order appealed from, it had to take into consideration the copies made available to the appellant on the 20th and 21st December, 1962. It opined that the expression 'requisite' found in s. 12(2) means "properly required", and hence the limitation has to be computed on the basis of the copy made available to the appellant in December, 1962.

It was not disputed on behalf of the respondents that it was not necessary for the appellant to apply for a copy of the order appealed from immediately after the order was pronounced. The appellant could have, if it chose to take the risk, waited till the ninety days period allowed to it by the statute was almost exhausted. Even then the time required for obaining a copy of the order would have been deducted in calculating the period of limitation for filing the appeal. Hence the expression 'time requisite' cannot be understood as the time absolutely necessary for obtaining the copy of the order. What is deductible under s. 12(2) is not the minimum time within which a copy of the order appealed against could have been obtained. It must be remembered that sub-s. 2 of s. 12 enlarges the period of limitation prescribed under entry 157 of Schedule I. That section permits the appellant to deduct from the time taken for filing the appeal, the time required for obtaining the copy of the order appealed from and not any lesser period which might have been occupied if the application for copy had been filed at some other date. That section lays no obligation on the appellant to be prompt in his application for a copy of the order. A plain reading of s. 12(2) shows that in computing the period of limitation prescribed for an appeal, the day on which the judgment or order complained of was pronounced and the time taken by the court to make available the copy applied for, have to be excluded. There is no justification for restricting the scope of that provision.

If the appellate courts are required to find out in every appeal filed before them the minimum time required for obtaining a copy of the order appealed from, it would be unworkable. In that event every time an appeal is filed, the court not only will have to see

A whether the appeal is in time on the basis of the information available from the copy of the order filed along with the memorandum of appeal but it must go further and hold an enquiry whether any other copy had been made available to the appellant and if so what was the time taken by the court to make available that copy. This would lead to a great deal of confusion and enquiries into B the alleged laches or dilatoriness in respect not of copies produced with the memorandum of appeal but about other copies which he might have got and used for other purposes with which the court has nothing to do.

The High Court in arriving at the decision that the appeal is barred by time relied on the decision of the Lahore High Court in C *Mathela and Others* v. *Sher Mohammad*(1). It also sought support from the decisions of the Judicial Committee in *Pramatha Nath Roy* v. *Lee*(2) and *J. N. Surty* v. *T. S. Chettyar*(3). The Lahore decision undoubtedly supports the view taken by the High Court. It lays down that the words "time requisite" mean simply time required by the appellant to obtain a copy of the decree D assuming that he acted with the reasonable promptitude and diligence. It further lays down that the time requisite for obtaining a copy is the shortest time during which the copy would have been obtained by the appellant, and it has nothing to do with the amount of time spent by him in obtaining the copy which he chooses to file with the memorandum of appeal. With respect to the learned judges who decided that case we are unable to spell E out from the language of s. 12(2) the requirement that the appellant should act with reasonable promptitude and diligence and the further condition that the time requisite for obtaining a copy should be the shortest time during which a copy could have been obtained by the appellant. We are of the opinion that the said decision does not lay down the law correctly.

F

Now we shall proceed to consider the decisions of the Judicial Committee relied on by the High Court. In *Pramatha Nath Roy* v. *Lee*(2) the appellant was found to be guilty of laches. The Judicial Committee held that he was not entitled to deduct the time lost due to his laches. It is in that context the Board observed that the time which need not have elapsed if the appel- G lant had taken reasonable and proper steps to obtain a copy of the decree or order could not be regarded as 'requisite' within sub-s. 2 of s. 12. That decision does not bear on the question under consideration.

In *J. N. Surty* v. *T. S. Chettyar*(3), the question that fell for decision by the Judicial Committee was whether in reckoning H the time for presenting an appeal, the time required for obtaining

(1) A.I.R. 1935 Lah. 682. (2) 49 I.A. 3 7.

(3) 55 I.A. 161.

a copy of the decree or judgment must be excluded even though by the rules of the court it was not necessary to produce with the memorandum of appeal the copy of the decree or judgment. Their Lordships answered that question in the affirmative. While deciding that question, their Lordships considered some of the observations made by the High Court relating to the dilatoriness of some Indian practitioners. In that context they observed :

> "There is force no doubt in the observation made in the High Court that the elimination of the requirement to obtain copies of the documents was part of an effort to combat the dilatoriness of some Indian practitioner; and their Lordships would be unwilling to discourage any such effort. All, however, that can be done, as the law stands, is for the High Courts to be strict in applying the provision of exclusion.
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> The word 'requisite' is a strong word; it may be regarded as meaning something more than the word 'required'. It means 'properly required' and it throws upon the pleader or counsel for the appellant the necessity of showing that no part of the delay beyond the prescribed period is due to his fault."

In other words, what their Lordships said was that any delay due to the default of the pleader of the appellant cannot be deducted. There can be no question of any default if the steps taken by the appellant are in accordance with law. Hence, the above quoted observations of the Judicial Committee can have no application to the point under consideraion.

Preponderance of judicial opinion is in favour of the conclusion reached by us earlier. The leading case on the subject is the decision of the full bench of the Madras High Court in *Panjam* v. *Trimala Reddy*(1), wherein the court laid down that in s. 12 the words 'time requisite for obtaining a copy of the decree' mean the time beyond the party's control occupied in obtaining the copy which is filed with the memorandum of appeal and not an ideal lesser period which might have been occupied if the application for the copy had been filed on some other date. This decision was followed by the Travancore-Cochin High Court in *Kunju Kesavan* v. *M. M. Philip*(2), by the Allahabad High Court in *B. Govind Raj Sewak Singh and Another* v. *Behuti Narain Singh*(3) and by the Madhya Pradesh High Court in *K. U. Singh* v. *M. R. Kachhi*(4).

From the above discussion it follows that the decision under appeal does not lay down the law correctly. But yet we are of

(1) I.L.R. 57 Mad. 560.
(2) A.I.R. 1953 T.C. 552.
(3) A.I.R. 1953 All. 486.
(4) A.I.R. 1960 M.P. 140.

A the opinion that this is not a fit case to interfere with the order of the High Court dismissing the appeal. The respondents were acquitted by the assistant sessions judge, Farrukhabad on November 10, 1962. We were informed by learned counsel for the State that this appeal was brought to this court mainly with a view to settle an important question of law, and under instructions
B from the State government he told us that he does not press the appeal on merits. Accordingly this appeal is dismissed.

R.K.P.S. *Appeal dismissed.*