

The Indian Law Reports

APPELLATE CIVIL

Before Inder Dev Dua, J.

RAM KISHAN AND ANOTHER,—Appellant.

versus

MATHURI DEVI AND OTHERS,—Respondents.

Regular Second Appeal No. 1614 of 1963.

Limitation Act (IX of 1908)—S. 12—"Time requisite"—Meaning of—Claim to the exclusion of the "time requisite"—Whether substantive right—Application for copy requiring sanction of the Presiding Officer—Time requisite—Whether starts from the date application is made or the date when it is made over to copying agent—Copy prepared at one place and delivered at another—Time upto the date of delivery of the copy—Whether to be excluded.

1965
September 17th

Held, that the expression "time requisite", as used in section 12 of the Indian Limitation Act, has not been defined, with the result that this expression must be construed to mean time properly and reasonably required, and no period of time can be required under this section which need not have elapsed if the appellant had taken reasonable and proper steps to obtain the certified copies of the relevant judgment and decree. It is quite true that the word "requisite" is a strong word and it means something more than the word "required". It may appropriately be held to mean "properly required". If the time actually taken for obtaining copies is due to any dilatoriness on the part of the applicant, then that time may not be allowed to him, but he must be allowed any time occasioned by anything done in the office of the Court, as section 12 confers a substantive right upon a party to claim the exclusion of the time requisite.

Held, that in a case where the party cannot obtain a certified copy of the judgment or the decree without the sanction of the Court, the time requisite begins to start when the application is made to the Presiding Officer for his sanction provided the application thereafter is given to the copying agent within a reasonable time. In the present case the Court sat at Chandigarh and the copying agent at Kharar. The application for the copy of the

judgment was presented to the Presiding Officer on 24th December, 1962 and after obtaining his sanction it was given to the copying clerk at Kharar on 28th December, 1962. The copy was ready at Kharar on 13th February, 1963 but was delivered to the appellant at Chandigarh on 15th February, 1963. Similarly the copy of the decree was ready at Kharar on 3rd March, 1963 but was delivered to the appellant on 5th March, 1963 at Chandigarh. The appellant was, therefore, entitled to the exclusion of time from 24th December, 1962 to 15th February, 1963 in the case of the copy of the judgment and from 19th February, 1963 to 5th March, 1963 in the case of the copy of the decree and after excluding this time, the appeal was within time.

Regular Second Appeal from the decree of the Court of Shri Salig Ram Seth, Senior Sub-Judge, Ambala, with Enhanced Appellate Powers, dated 4th September, 1963, affirming that of Shri Gurcharan Singh Dhaliwal, Subordinate Judge 1st Class, Chandigarh, dated the 8th December, 1962 ordering that the decision of all the issues being in favour of the plaintiffs, their cause that Bhag Mal deceased and the defendants entered into partnership in regard to truck No. PNE 4161 and agreed to share the profits and losses equally and that they are entitled to rendition of its accounts succeeds which is decreed with costs and a preliminary decree be drawn up accordingly.

V. P. SOOD AND H. L. SARIN, ADVOCATES, for the Appellants.

G. P. JAIN, ADVOCATE, for the Respondents.

JUDGMENT

Dua, J.

DUA, J.—The short point which arises in this regular second appeal is whether the appeal presented in the Court of the learned Senior Subordinate Judge, Ambala, was within limitation. The Court below has, held it to be barred by time.

The dates relevant for the purpose of obtaining copies of the judgment and decree of the Court of first instance may here be noted. The suit was for rendition of accounts of a dissolved partnership instituted by Shrimati Mathuri Devi. The partnership had been entered into by her husband with the defendants for doing transport business. A preliminary decree in this suit was passed on 8th December, 1962, by Shri Gurcharan Singh Dhaliwal, Subordinate Judge, 1st Class at Chandigarh. An application for a copy of the judgment was presented to the Court at Chandigarh on 24th December, 1962, because according to the common case of the parties, without an order of the Court, such an

application could not be taken cognizance of by the copying clerk, who functions at Kharar. This application with an order of the Court was given to the copying clerk on 28th December, 1962, when he registered it in the relevant register. The copy was ready at Kharar on 13th February, 1963, but was delivered to the parties at Chandigarh on 15th February, 1963, when the copying clerk visited Chandigarh. On a question by me, the learned counsel for the respondents stated that, in all probability the copying clerk had taken the file to Kharar. In regard to the copy of the preliminary decree, an application was made on 19th February, 1963 and the copy was ready again at Kharar on 3rd March, 1963, which was delivered at Chandigarh on 5th March, 1963. Both the parties, I am informed, belong to Chandigarh. The appeal was presented in the Court of the Senior Subordinate Judge at Ambala on 18th March, 1963.

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On these facts, the learned Senior Subordinate Judge held that if the time requisite was to be calculated from 24th December, 1962, up to 15th February, 1963, for the copy of the judgment and from 19th February, 1963, up to 5th March, 1963, for obtaining copy of the preliminary decree, then a period of 69 days was to be deducted as time requisite for obtaining copies and the appeal presented on 18th March, 1963, would be within time because 17th March, 1963 was a Sunday. He, however, felt that the time requisite for obtaining a copy of the judgment in the present case could only start from 28th December, 1962, when the application was handed over to the copying clerk and also would be counted only up to 13th February, 1962 when the copy was ready at Kharar. In the same way, in regard to time requisite for obtaining copy of the decree, he felt that the time should be counted up to 3rd March, 1963 and not 5th March, 1963. It is agreed at the bar that if 69 days are to be excluded, and 17th March, 1963 being a Sunday is also added, then the appeal presented was amply within time. The question, therefore, is what is the time requisite in the case in hand. Under section 12, Indian Limitation Act, in computing the period of limitation for an appeal, the day on which the judgment complained of was pronounced and the time requisite for obtaining a copy of the decree must be excluded as also the time requisite for obtaining a copy of the judgment on which the decree is based. The expression "time requisite", as used in this section, has not been defined, with the

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result that this expression must be construed to mean time properly and reasonably required, and no period of time can be required as requisite under this section which need not have elapsed if the appellant had taken reasonable and proper steps to obtain the relevant judgment and decree. It is quite true that the word "requisite" is a strong word and it means something more than the word "required". It may appropriately be held to mean "properly required". If the time actually taken for obtaining copies is due to any dilatoriness on the part of the applicant, then that time may not be allowed to him, but he must be allowed any time occasioned by anything done in the office of the Court. Section 12, in my opinion, really confers a substantive right upon the appellant to claim the time as excluded. In the case in hand, therefore, when the copying clerk sits at Kharar and the Presiding Officer is at Chandigarh, in my opinion, on the date when the application for a copy is made to the Presiding Officer at Chandigarh, time requisite must be held to start. The application was given to the copying agent within reasonable time. Again, no date of delivery having been fixed in this case, the mere fact that the copy was ready at Kharar would seem to me to be immaterial and the date on which the copy is delivered by the clerk at Chandigarh namely 15th February, 1963, for the judgment and 5th March, 1963, for the decree, must be deemed to be the relevant date for construing the expression "time requisite". It is obvious that the question as to what is the time requisite for obtaining copies in any particular case, must depend on its peculiar facts and circumstances and has to be determined in its own background, of course in the light of the rules, if any, framed on the subject and also of the practice of the Court. I am informed that there are in existence rules framed for the supply of copies of records in the present case to which my attention has been drawn by Shri Ganga Parshad Jain. In Standing Order No. 5 in Appendix No. VI contained in Punjab Acts by Shri Shamair Chand, Volume II, 1934 Edition, I find that in Rule No. 7, it is provided, *inter alia*, that applications for copies shall be received, in the case of applications made at the headquarters of a district, by the officer-in-charge of the copying agency, by the *sadar* copying agent or by the officer taking daily petitions, and in the case of applications for copies of records of Courts or offices situated at a distance of more than ten miles from the headquarters of the

district, and made to such Courts or offices, by the Presiding Officer of the Court or office, a copy of whose record is applied for. Under Rule 9, on receipt, the applications shall be scrutinised by the *Sadar* Copying Agent at headquarters and elsewhere by the Presiding Officer of the Court, and if the application does not require to be returned, the Presiding Officer shall, if the copy can be given, order it to be prepared. Under Rule 13, if a copy is ordered to be prepared, the copying agent shall, in the case of personal applications, tell the applicant when the copy is likely to be ready, and this shall ordinarily be not later than the third working day. But any applicant for an 'urgent copy', if his application be presented within the first two hours of the working day, and the "urgent fee" has been paid, shall be entitled to have his copy furnished to him, if possible, before the close of the same day. Without pursuing the matter further and without determining whether or not these rules are applicable to the case before me, though it is conceded that they are applicable, in my opinion, on the facts and circumstances of this case, the time, from the date of the presentation of the application to the Court, to the date of delivery, must be held to be requisite under the provision of section 12, Indian Limitation Act.

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The respondents counsel has submitted that on 5th March, 1963, both the copies were with the appellants and it is not shown why the appeal was not presented before 18th March, 1963. This contention may have relevance for the purpose of applying section 5, Indian Limitation Act, but not section 12, which confers a substantive right not depending on discretion of the Court.

For the foregoing reasons, I am constrained to set aside the judgment and decree of the learned Senior Subordinate Judge and send the case back to the said Court for re-decision on the merits.

The respondents' learned counsel has submitted that the plaintiff Shrimati Mathuri Devi, is a poor widow and is being deprived of her legitimate right by the defendants, who are resisting the suit on untenable grounds. He has requested that I should myself dispose of the entire appeal on the merits. With this object, he has desired that I should read the judgment of the trial Court which is very well-reasoned and sound.

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I am afraid it is not possible for me to convert myself into a Court of first appeal in the present proceedings when the only question agitated by the appellants is one of limitation for the appeal in the lower appellate Court. I, however, do feel that the learned Senior Subordinate Judge must dispose of the appeal with due despatch and within five weeks from today. Parties are directed to appear in the Court of the Senior Subordinate Judge on 11th October, 1965 and the appeal must be heard and disposed of on 18th October, 1965. The records may be remitted to the Court below (Court of the Senior Subordinate Judge, Ambala) without undue delay. In the circumstances of this case there would be no order for costs in this appeal, but otherwise the costs would be costs in the cause.

R.S.

CIVIL MISCELLANEOUS

Before S. B. Kapoor and Inder Dev Dua, JJ.

DARSHAN SINGH,—Petitioner.

versus.

THE STATE OF PUNJAB AND OTHERS,—Respondents.

Civil Writ No. 2381 of 1963.

1965
October 12th

Representation of the People Act (XLIII of 1951)—S. 23—Registration of Electors Rules (1960)—Rules 26(3) and (4)—“Immediately” and “as soon as may be”—Significance and meaning of—Right of franchise—Importance of—Elective process—How to be made effective—Duties to administrative officers stressed.

Held, that the use of the words “immediately” and “as soon as may be” in sub-rules (3) and (4) of Rule 26 of the Registration of Electors Rules, 1960, is very significant. The expression “as soon as may be” in Rule 26(4) imposes a solemn duty on the Officer concerned to consider an application submitted in Form VI of the Rules within a reasonable time with an understanding to do it within the shortest possible time. The word “immediately” in Rule 26(3) casts its reflection on and lends colour to the expression “as soon as may be”. The word “immediately” has the same meaning as the word “forthwith” has, implying reasonably speedy and prompt action and omission of all delay. What is required to be done “immediately” must be done “as quickly as is reasonably possible”. It is not always possible to quantify with precision, the period of time with reference to days, hours or months, but it is not at all difficult to say on a consideration of