

## REVISIONAL CIVIL

Before D. K. Mahajan and A. D. Koshal, JJ.

TARA CHAND AND OTHERS,—Petitioners

versus

PARKASH CHAND AND ANOTHER,—Respondents

## Civil Revision No. 61 of 1967

November 20, 1969

*Limitation Act (XXXVI of 1963)—Sections 2(j), 4 and 12(2)—Limitation for filing appeal expiring on an holiday—Application for obtaining certified copy of the order appealed against put in on the next day—Appeal filed the same day when the copy supplied—Time spent in obtaining such copy—whether excluded for computing period of limitation for appeal.*

*Held*, that while the effect of section 12 of the Limitation Act, 1963, is to extend the period of limitation prescribed in the Schedule for a particular proceeding, section 4 has no such effect and merely enables the party concerned to file his suit, appeal or application, as the case may be, on the reopening of the Court, without extending the "period of limitation" or the "prescribed period" within the meaning of these expressions as defined in clause (j) of section 2 of the Act. In order to arrive at the "prescribed period" in a particular case, all that has to be done, therefore, is to get the period of limitation as given in the Schedule and to add to it any period or periods which can be excluded under section 12 or any of the other sections of PART III of the Act which may be applicable. After the "prescribed period" has been arrived at, it has to be seen whether the suit, appeal or application in question is instituted, preferred or made within that period or after its expiry. If this is done within that period, there is an end of the matter and the suit, appeal or application must be said to have been filed within time. If, on the other hand, the suit, appeal or application is filed after expiry of that period, the Court will not dismiss the same in pursuance of the provisions of section 3 of the Act if the case is covered by the provisions of section 4 thereof which provisions, however, do not extend the period of limitation. Thus, if the limitation for filing an appeal expires on a holiday and the application for obtaining the certified copy of the order under appeal is made on the next day, and the appeal is then filed on the very day the copy is ready and supplied, the time spent in obtaining certified copy must be excluded for computing the period of limitation. (Para 5)

*Case referred by the Hon'ble Mr. Justice Prem Chand Pandit, on 6th March, 1969 to a Division Bench for decision of an important question of law. The Division Bench consisting of the Hon'ble Mr. Justice D. K. Mahajan and the Hon'ble Mr. Justice A. D. Koshal, finally decided the case on 20th November, 1969.*

*Petition under Section 115 of the Civil Procedure Code for revision of the order of Shri Banwari Lal Singal, Additional District Judge, Rohtak,*

*dated 21st November, 1966, affirming that of Shri D. R. Saini, Senior Sub-Judge, Rohtak, dated 16th January, 1965 dismissing the objections.*

RAM RANG, ADVOCATE, for the petitioners.

N. C. JAIN, ADVOCATE, for the respondents.

#### JUDGMENT

KOSHAL, J.—This revision petition raises a question involving the interpretation of sections 4 and 12 of the Limitation Act, 1963 (hereinafter to be referred to as the Act).

(2) Tara Chand and others, the petitioners before us, are insolvents whose objections against the sale of their property were rejected by the Insolvency Judge, Rohtak, on the 16th of January, 1965. The period of limitation prescribed in the Schedule to the Act for filing an appeal against that order being 30 days, it expired on the 15th of February, 1965, which was a gazetted holiday. The petitioners made an application for obtaining a certified copy of the order of the Insolvency Judge on the 16th of February, 1965. The copy was ready and was supplied to the petitioners on the 1st of June, 1965, and on the same day the petitioners instituted an appeal against the said order before the District Court, Rohtak. Shri Banwari Lal Singal, Additional District Judge, found that the petitioners were entitled to exclude a period of 106 days, which they had spent in obtaining the certified copy of the order appealed against, in computing the period of Limitation of 30 days prescribed by the Schedule to the Act for the appeal. According to him, however, the appeal was time-barred as the total period of 106 days which the petitioners could take advantage of expired on the 31st of May, 1965. It is against the order of dismissal of the appeal that the petitioners have come up in revision to this Court.

(3) The petition came up for hearing in the first instance before P. C. Pandit, J., who held that the calculation of the appellate Court was erroneous, the said period of 106 days having expired not on the 31st of May, 1965, but on the 1st of June, 1965, on which date the appeal was filed. It was, however, urged before him on behalf of the respondents that the petitioners were not entitled to exclude the period of 106 days for computing the period of limitation within which the appeal could be filed because they had not made the

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application for obtaining a copy of the order appealed against within the period of 30 days prescribed in the Schedule to the Act as the period within which the appeal could be filed. Learned counsel for the petitioners, on the other hand, contended before Pandit, J., that the period of limitation for filing the appeal stood extended up to the 16th of February, 1965, under the provisions of section 4 of the Act and that, therefore, the application for obtaining a copy of the order of the Insolvency Judge was made within limitation. Pandit, J., found that there was a divergence of judicial opinion on the point and was of the view that it be considered by a larger Bench. That is how the case has been placed before us for decision.

(4) The contentions raised before Pandit, J., have been advanced during the course of arguments addressed to us also and it would facilitate a consideration of the point involved if the relevant provisions of the Act are set out here :

"2. In this Act, unless the context otherwise requires,—

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(j) 'period of limitation' means the period of limitation prescribed for any suit, appeal or application by the Schedule, and 'prescribed period' means the period of limitation computed in accordance with the provisions of this Act.

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3. (1) Subject to the provisions contained in sections 4 to 24 (inclusive), every suit instituted, appeal preferred, and application made after the prescribed period shall be dismissed, although limitation has not been set up as a defence.

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4. Where the prescribed period for any suit, appeal or application expires on a day when the court is closed, the suit, appeal or application may be instituted, preferred or made on the day when the court reopens.

*Explanation.*—A court shall be deemed to be closed on any day within the meaning of this section if during any part

of its normal working hours it remains closed on that day.”

12. (1) In computing the period of limitation for any suit, appeal or application, the day from which such period is to be reckoned, shall be excluded.
- (2) In computing the period of limitation for an appeal or an application for leave to appeal or for revision or for review of a judgment, the day on which the judgment complained of was pronounced and the time requisite for obtaining a copy of the decree, sentence or order appealed from or sought to be revised or reviewed shall be excluded.
- (3) Where a decree or order is appealed from or sought to be revised or reviewed, or where an application is made for leave to appeal from a decree or order, the time requisite for obtaining a copy of the judgement on which the decree or order is founded shall also be excluded.
- (4) In computing the period of limitation for an application to set aside an award, the time requisite for obtaining a copy of the award shall be excluded.

*Explanation.*—In computing under this section the time requisite for obtaining a copy of a decree or an order, any time taken by the court to prepare the decree or order before an application for a copy thereof is made shall not be excluded.”

It may also be noted here that sections 3 and 4 occur in PART II of the Act which is headed “LIMITATION OF SUITS, APPEALS AND APPLICATIONS”, while sections 12 to 24 constitute PART III of the Act which bears the heading “COMPUTATION OF PERIOD OF LIMITATION”.

(5) A plain reading of the provisions above quoted would show that while the effect of section 12 is to extend the period of limitation prescribed in the Schedule for a particular proceeding, section 4 has no such effect and merely enables the party concerned to file his suit, appeal or application, as the case may be, on the reopening of the Court, without extending the “period of limitation” or the “prescribed period” within the meaning of these expressions as defined in clause (j) of section 2 of the Act. In order to arrive at the “prescribed period” in a particular case, all that has to be done, therefore, is to

get the period of limitation as given in the Schedule and to add to it any period or periods which can be excluded under section 12 or any of the other sections of PART III of the Act which may be applicable. After the "prescribed period" has been arrived at, it has to be seen whether the suit, appeal or application in question was instituted, preferred or made within that period or after its expiry. If this was done within that period, there is an end of the matter and the suit, appeal or application must be said to have been filed within time. If, on the other hand, the suit, appeal or application was filed after the expiry of that period, the Court will not dismiss the same in pursuance of the provisions of section 3 of the Act if the case is covered by the provisions of section 4 thereof which provisions, however, as already stated, do not extend the period of limitation.

(6) If the case in hand be viewed in the light of the above discussion, the appeal presented to the District Court at Rohtak must be regarded as having been preferred within time. It is not denied that the Copying Department took no less than 106 days to supply the copy of the order of the Insolvency Judge to the petitioners and that if that period of 106 days is excluded under the provisions of sub-section (2) of section 12 of the Act, the appeal would be within time. It is contended on behalf of the respondents, however, that that period of 106 days cannot be so excluded for the reason that the application for obtaining a copy of the order of the Insolvency Judge was made after the expiry of the period of limitation prescribed in the Schedule to the Act for the appeal. In this connection reliance is placed in *Bhiwani Cloth Mills, Ltd. v. Parmeshari Doss and others* (1), *Avasarala Kamaraju Pantulu and another v. Balla Saramma* (2), *C. Raghavendra Rao and others v. Vasavamba* (3), *Municipal Councillors of Puri Municipality v. Madhusudhan Das Mohapatra* (4), and *Mukat Beharilal Agarwal Vakil v. Additional Distt. Magistrate (Executive) and others* (5). In all these authorities it was observed that when an application for obtaining a copy of the judgment or the decree appealed from is made after the expiry of the period of limitation the appellant is not entitled to exclude the period taken by the Copying Deptt. to supply the copy, under

- (1) A.I.R. 1947 Lah. 168.
- (2) A.I.R. 1942 Mad. 604.
- (3) A.I.R. 1960 Mysore 216.
- (4) A.I.R. 1961 Orissa 133.
- (5) A.I.R. 1959 All. 699.

sub-section (2) of section 12 of the Act for computing the "prescribed period". These cases, however, are really of no help to the respondents as the observations made therein must be taken to have been made in relation to the particular facts dealt with therein and not to a case of the type in hand, the facts of which are, in our opinion, distinguishable. All of them purported to follow *Maqbul Ahmed and others v. Onkar Pratap Narain Singh and others* (6), in which one of the questions arising for decision was whether the period of the long vacation during which the Court is closed *can be excluded* for arriving at the "prescribed period" if the period of limitation given in the Schedule for making an application expires within that vacation. Replying the question in the negative with reference to the provisions of section 4 of the Act Lord Tomlin observed :

"The second period is the period of the long vacation. In regard to that matter the appellants seem to their Lordships to be in a position which is in the nature of a dilemma. It is to be noted that there is a marked distinction in form between S. 4 and S. 14. The language employed in S. 4 indicates that it has nothing to do with computing the prescribed period. What the section provides is that, where the period expires on a day when the Court is closed, notwithstanding that fact, the application may be made on the day that the Court re-opens; so that there is nothing in the section which alters the length of the prescribed period; whereas in S. 14, and other sections of a similar nature in the Act, the direction begins with the words 'in computing the period of limitation prescribed for any application' certain periods shall be excluded. It, therefore, seems to their Lordships that, where there is ground for excluding certain periods under S. 14, in order to ascertain what is the date of the expiration of the prescribed period, the days excluded from operating by way of limitation have to be added to what is primarily the prescribed period; that is to say, if the prescribed period is 3 years and 20 days are to be excluded in order to determine when the prescribed period expires, 20 days have to be added to the 3 years, and the date of the expiration of the prescribed period is thus ascertained."

(6) A.I.R. 1935 P.C. 85.

(7) These observations make it clear that while section 4 of the Act allows an appellant to file an appeal on the opening day of the Court though the time within which the appeal could be filed has expired when the Court was closed, the section does not operate so as to extend the prescribed period of limitation. It is noteworthy that Lord Tomlin did not make any observations as to the point of time when *an application for obtaining a copy of the judgment sought to be appealed from* was to be made or as to the circumstances in which the time spent in obtaining the copy of such judgment would be "the time-requisite" as contemplated by sub-section (2) of section 12 of the Act. However, what was specifically laid down was that the correct method of arriving at the "prescribed period" is the same as the one indicated by us above, namely, that to the period of limitation given in the Schedule must be added any other period which is liable to exclusion under PART III of the Act. This method of computation was correctly applied in *Bhiwani Cloth Mill's case* (1), the facts of which may be stated. The suit of the plaintiff-respondents was dismissed in the trial Court on the 31st of July, 1940. On that very day they applied for a copy of the judgment which was completed and delivered to them on the 7th of August, 1940. However, they did nothing more till the 30th of September, 1940, when they made an application to the Court for a copy of the decree-sheet which was completed and delivered to them on the 11th of October, 1940, on which date they filed their appeal before the lower appellate Court. The annual vacation of the Court, it may be noted, began on the 1st of September, 1940, and continued until the 30th of September, 1940, so that the Court reopened on the 1st of October, 1940. Applying the method laid down in *Magbul Ahmad's case* for arriving at the "prescribed period" Harries C.J., who delivered the leading judgment of the Division Bench, observed :

"The observations which I have quoted also show that in computing the period of limitation the proper method is to take what is primarily the prescribed period and then add to it the periods which are excluded by reason of S. 12 or 14 or such like. In the present case primarily the prescribed period was thirty days. Seven days had to be excluded for obtaining a copy of the judgment and twelve days are excluded for obtaining a copy of the decree sheet. These two periods must be added to the prescribed period of 30 days and that makes a period of 49

days. Computing 49 days from the date of the judgment, namely, 31st July, 1940, that brings us to the 18th September. On that day, the period of limitation expired; but as the Court was closed the appellant was by reason of S. 4, Limitation Act, entitled to file his appeal on the re-opening day of the Court, namely, the 1st October. It is, however, clear from the judgment in *Maqbul Ahmad's case* (6) that S. 4, Limitation Act, thus did not extend the time for filing the appeal from the 18th September to the 1st October."

(8) With all respect, we would say that these observations are unexceptionable. But one thing has to be borne in mind in connection therewith. What the appellant in the case sought was that the period of limitation be taken to have been extended from the 18th of September, 1940, to the 1st of October, 1940, by reason of the provisions of section 4 of the Act. It was urged on his behalf that as the appeal could be filed at any time up to 1st of October, 1940, by reason of the provisions of section 4 of the Act, the application for obtaining the copy of the impugned judgment could be made at any time till then and that the period taken to obtain such a copy would have to be excluded. Repelling the contention Harries C.J., observed :

"That would be so, if the effect of S. 4, Limitation Act, was to extend the period of limitation but if the period of limitation had already expired, then it appears to me that copies could not be asked for, and in any event, time spent in obtaining such copy could not be taken into account, because time had already expired. It is urged that as the appeal could be filed on 1st October, the right to file the appeal existed on 30th September and that gave the appellant a right to apply for copies of the decree sheet and to exclude the time taken to obtain such copies for the purpose of computing the actual period of limitation. It appears to me that if it is to be held that this appeal was filed within time on 11th October, 1940, we are bound to hold that the period of limitation was in fact extended by reason of S. 4, Limitation Act, and to hold that would be to hold contrary to the precise decision of their Lordships in *Maqbul Ahmad's case* (6)."

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(9) These observations must be taken to mean, when coupled with those quoted earlier, only that when an appeal is filed after the "prescribed period", that is, the period of limitation given in the Schedule extended by that liable to exclusion under PART III of the Act, recourse cannot be had to the provisions of section 4 of the Act for a further extension of the period by any of the days for which the Court was closed. They do not, in our opinion, mean that even if an appeal is filed within the "prescribed period", it would be time-barred if the application for obtaining a copy of the impugned judgment is made on a day when the period of limitation prescribed in the Schedule has already run out. No provision in the Act says as to when such an application must be made before the time spent in obtaining the copy would be considered to be "the time requisite" within the meaning of sub-section (2) of section 12 of the Act nor has any principle of law been brought to our notice such as would negative the right with regard to the exclusion of time given to an appellant under that sub-section if the application for obtaining the copy in question is made at a particular point of time. This was also the view taken by a Full Bench of the Bombay High Court in *Murlidhar Shrinivas v. Moti Lal-Ramcoomar*, (7), the facts of which may also be stated. The judgment was given on the 6th March, 1936, and on the same day the appellant applied for a copy thereof which was supplied to his attorneys on the 19th of March, 1936. On the 9th of April, 1936, the appellant applied for a copy of the decree. The decree was sealed on the 20th of April, 1936, but the draft approved by the attorneys of the appellant and respondents was first submitted to the Prothonotary on the 24th of March, 1936. The appeal itself was filed on the 23rd of April, 1936. A preliminary objection was taken that the appeal was out of time since it was filed more than 20 days after the date of the decree and no extension of time could be allowed for obtaining a copy of the decree appealed from as no such copy was applied for within 20 days. Repelling the contention Beaumont, C.J., who delivered the main judgment in the case, observed:

"In my opinion there is no justification in the language of the section for imposing such a limitation upon the rights which the section confers upon the appellant. The decisions of this Court really amount to adding to S. 12 a provision that application for copy of the decree has been made before the time limited for

(7) A.I.R. 1937 Bom. 162.

appeal by Act, 151 has expired, and the section contains no such proviso.

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I demur to the theory that the Court can impose upon the statutory right of an appellant a restriction not warranted by the Act. I entertain no doubt that a rule providing that no time shall be allowed for obtaining a copy of the decree unless such copy be applied for within 20 days from the date of the decree would be *ultra vires*."

It was further observed by Beaumont C.J.:

"In my opinion there is no justification for the limit imposed upon the rights of the appellant under S.12 by the decisions of this Court. I think that those decisions are inconsistent with the decisions of the Privy Council in *Jijibhoy N. Surty v. T. S. Chettyar Firm*, (8) that S.12 confers a substantive right upon the appellant to the exclusion of the time specified."

(10) With the utmost respect we find ourselves in complete agreement with these observations, in conformity as they are with the latest pronouncement of the highest judicial tribunal in India. This is what their Lordships of the Supreme Court have laid down while interpreting sub-section (2) of section 12 of the Act in *State of U.P. v. Maharaja Narain and others* (9):

"It must be remembered that sub-section (2) of section 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

(8) 55 I.A. 161.

(9) A.I.R. 1968 S.C. 960.

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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."

(11) In the Madras, Mysore, Orissa and Allahabad authorities cited above, the facts were similar to those in the Lahore case and in every one of them the period of limitation was sought by the appellant concerned to be extended by recourse to section 4 of the Act, the application for obtaining a copy of the impugned judgment or decree having been made after the expiry of period of limitation as given in the Schedule. The reasons for the appellant seeking such extension in each of them was that if the prescribed period was computed in accordance with the provisions of the Schedule to the Act and section 12 thereof the appeal was time-barred as in the Lahore case. It was on such facts that these authorities laid down that the time spent in obtaining a copy of the impugned judgment in pursuance of an application made after the expiry of the period of limitation prescribed in the Schedule could not be excluded under the provisions of sub-section (2) of section 12 of the Act. We have already expressed our view that the observations made on the point in these cases must be taken to be limited to the particular facts dealt with therein. Nevertheless we may make it clear that if those observations were intended to mean that sub-section (2) of section 12 would not come into play in the case of any application made after the expiry of the period of limitation prescribed in the Schedule, we cannot subscribe to them and would hold that the correct interpretation of sub-section (2) of section 12 of the Act is the one laid down in the Bombay authority quoted above.

(12) We may here also make it clear that for the purpose of bringing their appeal within the "prescribed period" the petitioners do not now seek the aid of the provisions of section 4 of the Act at all. All that is contended on their behalf is that the period of limitation given in the Schedule must be computed in accordance with the provisions of sub-section (2) of section 12 of the Act without reference to the point of time when the application for obtaining a copy of the order of the Insolvency Judge was made. The contention must be accepted in view of the method of computation laid down in *Maqbul Ahmad's case* (6) and the dictum in the

Bombay authority cited above. Accordingly, the appeal preferred to the District Court at Rohtak by the petitioners must be held to be within time.

(13) In the result, the petition is allowed and the order of dismissal of the appeal presented by the petitioners to the District Court at Rohtak is set aside. That Court is directed to hear and decide the appeal on merits. The parties are directed to appear in that Court on the 15th of December, 1969. There will be no order as to costs of the proceedings before us.

D. K. Mahajan, J.—I agree.

N.K.S.

CIVIL MISCELLANEOUS

Before Prem Chand Jain, J.

RAM CHAND,—Petitioner.

Versus

THE PUNJAB STATE AND OTHERS,—Respondents.

Civil Writ No. 1470 of 1965

November 27, 1969

*Punjab Security of Land Tenures Act (X of 1963)—Section 24—Punjab Tenancy Act (XVI of 1887)—Sections 82, 85 and 88—Code of Civil Procedure (V of 1908) Order 47 Rule 1—Order of the Collector on the basis of the interpretation of the law then current—Review of the order on change in the interpretation of law—Whether permissible—Power of review of the revenue officers—Whether to be exercised only on grounds in Order 47 Rule 1 of the Code.*

*Held*, that the powers of review under section 24 of the Punjab Security of Land Tenures Act, 1963, are the same as under section 82 of the Punjab Tenancy Act, 1887. All the revenue officers of all grades possess powers to review their own orders and those of their predecessors provided no appeal has been filed against those orders. The power of review which vests in the revenue officer under section 82 of the Tenancy Act is not limitless and the same cannot be exercised any time and in any case, because that would lead to confusing results and would vest the revenue officers with powers which may be misused arbitrarily and would create an atmosphere of uncertainty. The exercise of this power would be governed by the guiding principles