



IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

Reference in RSA No. 70 of 2023 (B)
Reference reserved on: 08.12.2023
Reference answered on: 21.12.2023

Chet Ram

....Appellant.

Versus

Gian Chand and others

....Respondents.

Coram:

The Hon'ble Mr. Justice Ajay Mohan Goel, Judge

The Hon'ble Mr. Justice Sandeep Sharma, Judge

Whether approved for reporting?¹ Yes.

For the appellant:

Mr. G.R. Palsra, Advocate.

For the respondents:

Mr. H.S. Rangra, Advocate.

Ajay Mohan Goel, Judge

This Bench has been called upon to answer the following

Reference made by the learned Single Judge in the course of hearing of
CMP(M) No. 1569 of 2022, titled as Chet Ram Vs. Gian Chand and others:-

*“In a time barred appeal or revision or review,
where copy of decree, sentence or order appealed
from or sought to be revised or reviewed has been
applied after expiry of prescribed statutory period of
limitation provided for filing an appeal, or application
for leave to appeal or for revision or for review of a
judgment, whether applicant/ appellant/ petitioner
shall be entitled to set off prescribed statutory period
of limitation for counting period of delay or not?”*

2. The Reference has been made in the following background:-

Learned Single Judge of this Court while deciding CMP(M) No. 537 of 2017, *titled as Shammi Sood Vs. Ramesh Kumar*, vide order dated 29.08.2017, after placing reliance upon the judgments of the Hon'ble Supreme Court in *A.D. Partha Sarathy Vs. State of Andhra Pradesh*, AIR 1966 SC 38 and *Udayan Chinubhai Vs. R.C. Bali*, AIR 1977 SC 2319 held that an applicant, who made an application for supply of copy of judgment and decree after expiry of period of limitation, cannot claim exclusion of the time taken for obtaining the copies while computing the period of 90 days under Article 116 (a) of Schedule to the Limitation Act.

3. Disagreeing with the findings returned by the learned Single Judge in CMP(M) No. 537 of 2017 (*supra*), another learned Single Judge of this Court has made this Reference by observing as under:-

“18. I am of considered opinion that delay in filing the appeal is to be counted from expiry of prescribed period of limitation. As delay shall commence after expiry of limitation period available to a party for filing appeal. A statutory period cannot be curtailed and included in delay only for not applying the copy of judgment and decree during that period and/or not filing an appeal during prescribed period of limitation.”

4. We have heard learned counsel for the parties and have also gone through the Reference as well as the provisions of the Limitation Act.

5. The Parliament has enacted the Limitation Act, 1963 to consolidate and amend the existing law, i.e., the Indian Limitation Act, 1908, for the limitation of suits and other proceedings and for purposes connected thereto. In terms of Section 2(j) of the Limitation Act, 1963 (hereinafter referred to as 'the Limitation Act'), the "period of limitation" stands defined as under:-

"2. (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."

6. Section 5 of the Limitation Act provides for extension of prescribed period in certain cases and the same reads as under:-

"5. Extension of prescribed period in certain cases.- Any appeal or any application, other than an application under any of the provisions of Order XXI of the Code of Civil Procedure, 1908 (5 of 1908), may be admitted after the prescribed period if the appellant or the applicant satisfies the Court that he had sufficient cause for not preferring the appeal or making the application within such period.
Explanation.-The fact that the appellant or the applicant was misled by any order, practice or

judgment of the High Court in ascertaining or computing the prescribed period may be sufficient cause within the meaning of this Section.”

7. Part-III of the Limitation Act deals with computation of period of limitation and Section 12 thereof provides as under:-

“12. Exclusion of time in legal proceedings.”-(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 judgment 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.”

Thus, in terms of Section 12 of the Limitation Act, 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 and similarly, in computing the period of limitation for an appeal or an application for leave to appeal/revision/review etc., 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.

8. Explanation to Section-12 provides that in computing limitation under Section 12, 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 copy thereof is made, shall not be excluded.

9. A three Judge Bench of the Hon'ble Supreme Court in *A.D. Partha Sarathy Vs. State of Andhra Pradesh*, AIR 1966 Supreme Court 38 has held as under:-

"4.Now, coming to sub-section (2) of Section 12 of the Limitation Act, the object of the said sub-section is clear and it is to enable a party who seeks to file an appeal against an order to obtain a copy thereof, for without such copy he cannot make an effective representation against the validity of the order. For that reason, in computing the period of limitation the time taken for obtaining a certified copy of the order is excluded. It excludes time in the course of computation: it does not add to the period of limitation any period earned earlier. In computing or calculating the period of limitation from a particular

point the sub-section enables the exclusion of a time from that period caused by an event that intervened between the commencement and the termination of the said period. It has no concern with any events anterior to the commencement of the period of limitation or posterior to the said period. If time taken for obtaining a copy of the order before the commencement of the period of limitation could be excluded, on the parity of reasoning, time taken for obtaining a copy of the order after the period of limitation also could be excluded. This would lead to an anomalous position: a party can keep quiet till the period of limitation has run out and thereafter apply for a certified copy of the order and claim to exclude the time taken for obtaining the certified copy of the order from the period of limitation. That could not have been the intention of the Legislature. The object of the Legislature, therefore, was to enable a party to exclude the time requisite for obtaining a copy of the order after the period of limitation has commenced. The phraseology used in Sub-section (2) of Section 12 of the Limitation Act carries out that object. We, therefore, hold that the petitioner cannot exclude the time requisite for obtaining a copy of the order before the High Court refused to give leave. The petition is clearly out of time."

(emphasis supplied)

Incidentally, this judgment has been relied upon by the learned Single Judge while deciding CMP(M) No. 537 of 2017.

10. Relying upon this judgment of the Hon'ble Apex Court, Hon'ble High Court of Calcutta in *Gadadhar Ghosh Vs. Janki Nath Ghosh and others*, AIR 1968 Calcutta 509 held that in order to exclude the time taken for obtaining certified copy in favour of the appellant, the application for certified copy should be made within the time of limitation and if this was not done, the time taken for obtaining certified copy should not be excluded in favour of the appellant.

11. This law was further reiterated by the Hon'ble High Court of Calcutta in *United Commercial Bank Vs. M.C. Shaw Bonded Warehouse and others*, AIR 1985 Calcutta 445. The relevant paras of this judgment are quoted hereinbelow:-

"9. In the case of *Krishna Kumar Khemka Vs. Jagadish Narayan Bhan* (supra) relying on two Division Bench decisions of this Court reported in AIR 1968 Cal 509 and (1968) 72 Cal WN 296 the Court held that in order to exclude the time taken for obtaining certified copy in favour of the appellant the application for certified copy should be made within the time of limitation and if this was not done, the time taken for obtaining certified copy should not be excluded in favour of the appellant. The Court further relied on the decision of the Supreme Court in the case of *A. D. Parthasarathy Vs. State of Andh. Pra.*, AIR 1966 SC 38 where construing the period to be excluded under S. 12(2) of the Lim. Act 1963 following observation was made by the Supreme Court:

“If time taken for obtaining a copy of the order before the commencement of the period of limitation could be excluded, on the parity of reasoning, time taken for obtaining a copy of the order after the period of limitation, also could be excluded. This would lead to an anomalous position: a party can keep quiet till the period of limitation has run out and thereafter apply for a certified copy of the order and claim to exclude the time taken for obtaining the certified copy of the order from the period of limitation. That could not have been the intention of the Legislature”.

.....

12. No time limit is fixed for making an application for a certified copy of the order or decree to be appealed against. If, however, an application is made for obtaining a certified copy of the order or decree for the proposed appeal within the period of limitation prescribed for preferring the appeal then the time requisite of obtaining a certified copy of the order or decree shall be excluded in computing the period of limitation for preferring the appeal. If, however, as the decisions mentioned above show, where an application for certified copy of order or decree to be appealed against is not made before the expiry of the period of limitation prescribed for preferring the appeal from the order or decree then the proposed appellant is not entitled to the benefit of deducting the time requisite for obtaining the certified copy of the order or the decree in the matter of computation of the period of limitation for preferring the appeal against the order or decree. If the proposed appellant has allowed the period for preferring the appeal against the order or decree to run out he not entitled to the benefit of S.12 of the Lim. Act...”

12. Herein, the Reference, which we have been called upon to answer is: *“whether in a time barred appeal or revision or review, where copy of decree, sentence or order appealed from or sought to be revised or reviewed has been applied after expiry of prescribed statutory period of limitation provided for filing an appeal, or application for leave to appeal or for revision or for review of a judgment, whether applicant/appellant/petitioner shall be entitled to set off prescribed statutory period of limitation for counting period of delay or not?”*

13. A harmonious reading of the statutory provisions of the Limitation Act as well as the Articles thereof leads us to the conclusion that the statutory period of Limitation expires or extinguishes with the expiry thereof. In other words, the period of limitation to file an appeal/revision/review, as the case may be, commences from the date after the pronouncement of the judgment/order etc. and extinguishes upon expiry of the period of limitation. The protection that has been given to a litigant is to the effect that the period which is spent by a litigant in obtaining the copy of the judgment/order etc. is excluded while computing limitation. This means that if after the pronouncement of the judgment or order, some time has been consumed by the Court in the process of providing copy of the judgment or order to the party, who has applied for the certified copy of the judgment or order on the prescribed proforma, then this period is excluded while computing limitation. However, for this, the application for obtaining the certified copy of the judgment or order has to be filed by the party before the

expiry of limitation. In case this is done by a party, then the period spent, as from the date when the application is submitted to the Registry of the Court, till the preparation of the judgment or order, is excluded for the purpose of computation of limitation. However, we reiterate that for the application of this principle, it is a pre-requisite that the application for providing certified copy of the judgment or order has to be submitted by the party before the expiry of period of limitation. This is for the reason that once the period of limitation expires, the appeal/revision/review becomes time barred. Thereafter, any appeal or any application (other than an application under any of the provisions of Order XXI of the Code of Civil Procedure) can be admitted after the prescribed period, if the party satisfies the Court that he had sufficient cause for not preferring an appeal or filing application within the period of limitation in terms of Section 5 of the Limitation Act. But, once the period of limitation has expired and the copy of the judgment or order has not been applied by a party before the expiry of the period of limitation, the subsequent application that may be filed by a party to obtain the certified copy of the judgment or order and the time that may be consumed in the preparation of the said judgment or order cannot be excluded for the purpose of computing limitation in the light of the fact that the application itself was filed after the expiry of limitation. This reasoning of ours is also in harmony with the pronouncement of law by the Hon'ble Supreme Court of India in *A.D. Partha Sarathy Vs. State of Andhra Pradesh (supra)* as well as two judgments of the Hon'ble High Court of Calcutta in *Gadadhar Ghosh Vs.*

Janki Nath Ghosh and others & United Commercial Bank Vs. M.C. Shaw Bonded Warehouse and others (supra). Accordingly, we agree with the view that has been taken by the learned Single Judge in CMP(M) No. 537 of 2017, titled as *Shammi Sood Vs. Ramesh Kumar* vide order dated 29.08.2017.

14. Therefore, we answer the Reference by holding that in a time barred appeal or revision or review, where copy of decree, sentence or order appealed from or sought to be revised or reviewed has been applied after expiry of prescribed statutory period of limitation provided for filing an appeal, or application for leave to appeal or for revision or for review of a judgment, the applicant/appellant/petitioner shall not be entitled to set off, of the prescribed statutory period of limitation, for counting period of delay, as this set off is available only if the applicant/appellant/petitioner applies for the copy of decree, sentence or order before the expiry of period of limitation.

(Ajay Mohan Goel)
Judge

(Sandeep Sharma)
Judge

December 21, 2023
(bhupender)