

**RSA No. 02/2018**

OLD RUMTEK MONASTERY &amp; ORS.

APPELLANT (S)

VERSUS

LAMA KARMA DORJEE &amp; ORS.

RESPONDENT (S)

**Date: 14/03/2020****CORAM :****HON'BLE MR. JUSTICE ARUP KUMAR GOSWAMI, CJ.  
HON'BLE MR. JUSTICE BHASKAR RAJ PRADHAN, J.**

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(ARUP KUMAR GOSWAMI, CJ)

A learned Single Judge of this Court in IA No. 01 of 2016, filed in RFA No. 16 of 2016 (Tara Kumar Pradhan vs. Yuba Kumar Pradhan), by an order dated 19.04.2017, had held that an application or a Regular First Appeal cannot be deemed to be filed until all defects are cured and that the date of filing will be the date when the petition is placed before the Registry sans defects and not prior to that.

2. The factual matrix, in short, in the aforesaid case was that a Regular First Appeal was filed on 12.08.2016 before the Registry of the Court. There were some defects including non-payment of Court-fee. Other defects were rectified on 15.10.2016. However, the Court-fee was still not paid. Subsequently, as it appears, the Court-fee was paid on 22.10.2016 and thus, all defects were removed. It is, in the background of the above facts, learned Single Judge had made the observation which is noticed in the preceding paragraph.

3. The present appeal was filed along with a petition for condonation of delay. Registry had noted that there is a delay of three days in filing the appeal.

4. Relying on the decision rendered in Tara Kumar Pradhan (supra), the respondent filed an objection contending, amongst others, that there was a delay of 42 days from the date of removing of the defects.

5. When the matter came up for consideration before another Single Judge (the then Hon'ble Chief Justice), the learned Chief Justice did not concur with the view taken in Tara Kumar Pradhan (supra) and by an order dated 07.12.2018, observed that the matter is fit to be referred to a larger Bench for giving its opinion on the following question:-

“Whether the date of filing of the appeal in the Registry of the High Court is the crucial date for the calculation of limitation or the date when the defects are cured and appeal is resubmitted in the Registry?”

6. In view of the direction contained in paragraph 11 of the aforesaid order dated 07.12.2018, the matter was placed before the Chief Justice on administrative side for passing appropriate order.

7. It is on the basis thereof, on 27.11.2019, the matter was placed before the Full Bench comprising of three Judges of this Court.

8. It is to be noticed that one of the Hon'ble Judges forming part of the Full Bench on 27.11.2019 had rendered the decision in Tara Kumar Pradhan (supra). On due consideration, the Full Bench, by its order dated 27.11.2019, held that when a learned Single Judge differs with the order of another Single Judge, the matter need not be considered by a Bench of three-Judges and taking that view, it was observed that it would be appropriate that the matter is considered by a Division Bench.

9. Accordingly, the case has been listed before this Bench today.

10. We have heard Mr. B. Sharma, learned Senior Counsel assisted by Mr. B.N. Sharma for the appellant as well as Mr. Jorgay Namka, learned counsel appearing for respondents no. 1 and 4, Ms. Neetu Tamang, learned counsel

appearing for respondents no. 2 and 3 and Ms. Mukun Dolma Tamang, learned Assistant Govt. Advocate for respondent no. 5.

11. Mr. Sharma submits that the view taken by the learned Single Judge runs contrary to the provisions laid down in the Sikkim High Court (Practice and Procedure) Rules, 2011, for short, Rules of 2011. While recording the observation, which had led to the instant reference, the learned Single Judge had not considered the provisions as contained in Rules 3, 7, 9 and 13 of the Rules of 2011, he submits.

12. Drawing attention of the Court to Rules 3, 7, 9 and 13 of the Rules of 2011, learned Senior Counsel submits that the aforesaid provisions, when read together, would demonstrate without any ambiguity that the date of filing of the appeal, may be with effects, in the Registry of the High Court, is the date that has to be counted and reckoned for the purpose of calculation of limitation period and not the date when the defects are cured and the appeal is resubmitted in the Registry.

13. Learned Counsel appearing for the respondents, namely, Mr. Namka, Ms. Neetu Tamang and Ms. Mukun Dolma Tamang have also endorsed the submission of Mr. Sharma.

14. We have given our thoughtful consideration to the submission advanced by Mr. Sharma.

15. From a perusal of order dated 19.04.2017 passed in Tara Kumar Pradhan (*supra*), we find that Mr. Sharma is right in submitting that there was no discussion on relevant Rules of Rules of 2011.

16. We find that the present appeal was filed on 11.07.2018 at 04.00 pm. The officer in the filing counter had made the endorsement about the date and time of filing of the appeal and application for condonation of delay. There is also an endorsement that the appeal and application for condonation of delay was resubmitted on 07.08.2018 at 04.00 pm.

17. Chapter-II of the Rules of 2011 is under the heading "Judicial Business". Part A (a) thereof deals with the General Rules of Procedure.

18. Rule 3 (1) (a) of Rules of 2011, which is part of Rules of Procedure, provides that all petitions/appeals/applications/counter/ objections, etc. to be filed in the High Court shall be filed at the Filing Counter on every day which is not a Court holiday. Petitions sent by litigants through post or unauthorized persons for taking some judicial action shall not be entertained but returned per bearing post or per bearer. Rule 3 (1) (b) provides that any advocate/petitioner who files petitions/appeals/ applications/counter/ objections, etc. shall check the Notice Board of the High Court on the next day of filing to ascertain if any defects were detected. Rule 3 (1) (c) provides that the defect/defects so detected shall be rectified by the advocate/petitioner and the petition/application shall be resubmitted as per Rule 7 of the Rules of 2011 at the Filing Counter. Rule 3(2) lays down that no appeals, petitions, etc. shall be received unless presented during the Court hours between 10.00 am to 4.00 pm.

19. Rules 3(3), 3(4), 7, 9 and 13 of the Rules of 2011 read as follows:-

"3(3) All appeals, petitions, etc. accompanied by petition to be treated the same as urgent, should however, be presented personally to the Registrar or Joint Registrar or Deputy Registrar on any working day before 11 a.m. but may in exceptional cases, be received not later than 1 p.m.

3(4) On receipt of the appeals, petitions, applications, written statements, affidavits or other documents sought to be presented in the High Court the Registry shall endorse therein the time, date, month and year of presentation and make a similar endorsement on the copy of the party.

x

x

x

7. Amendment:- (1) Where the memorandum of appeal or any petition or application is not drawn up in the manner

prescribed herein or in the Code of Civil Procedure, 1908 the Registrar may allow the same to be amended within a time not exceeding ten days at a time and forty days in the aggregate to be fixed by him.

(2) Where the party fails to take any step for removal of the defects within the time fixed for the same, the Registrar may for reason to be recorded in writing, decline to register the document.

X

X

X

9. Endorsement of Memorandum of Appeal etc. as to limitation and stamp by Stamp Reporter: - (1) Notwithstanding anything contained in these rules, no appeal, petition or application shall be presented for admission unless the same bears an office report as to the limitation of time, sufficiency of stamp or Court fees and whether it complies with provisions of these rules. Such report shall ordinarily be endorsed on the memorandum or application and returned by the Stamp Reporter or such other officer as the Chief Justice may appoint in this behalf before 4 p.m. on the date on which such memorandum or application was made over to him for examination.

(2) If on scrutiny, the document is found in order, it shall be duly registered.

X

X

X

13. Limitation:- The date of presentation to the Registrar or Deputy Registrar or such other officer as provided under these rules shall be deemed to be the date of presentation for the purpose of limitation.”

20. A perusal of Rule 3(4) goes to show that when an appeal, petition, application, etc. is received, the Registry is required to endorse thereon the time, date, month and year of presentation. An appeal, petition, etc. is received when the same is filed in the Filing Section. Rule 3(3) provides for presentation of appeals, petitions, etc. personally to the Registrar or Joint Registrar or Deputy Registrar if the same is considered to be urgent. Rule 13 of the Rules of 2011 provides that the date of presentation to the Registrar or Deputy Registrar or such other officers as provided under Rules of 2011

shall be deemed to be date of presentation for the purpose of limitation. It does not refer to date of resubmission as contemplated in Rule 3 (1) (c). The expressions 'Registrar', 'Deputy Registrar' or 'such other officers' come within the ambit of the expression 'Registry' occurring in Rule 3 (4). Except Rules 3 (2), 3 (3) and 3 (4), there is no other provision which deals with presentation or filing of appeals, petition, etc. There is nothing to indicate that endorsement as indicated in Rule 3 (4) is to be made only when the defects are rectified. The word "resubmitted" as appearing in clause 3 (1) (c) pre-supposes earlier submission. Thus, there is no escape from the conclusion that date, month and year of presentation means the date, month and year of filing.

21. What Rule 3 (1) (d) provides for is that no application, petition, affidavit, etc. shall be placed before the Court under any circumstance unless the defects are rectified. Placing the matter before the Court is a different aspect and the same cannot be equated with filing or presentation of an appeal/application/ petition, etc. Once a document is presented before the Registry of the High Court and the Registry makes necessary endorsement of date and time of filing, Registry becomes the custodian of the document and merely because the same is handed back to the litigant or the lawyer for the purpose of resubmission after rectification, the same does not obliterate the fact of filing prior to resubmission.

22. For the aforesaid reasons, we have no hesitation to hold that the date of filing of the appeal in the Registry of the High Court, may be with defects, is the date that has to be reckoned for the purpose of calculation of limitation and not the date when the defects are cured.

23. Accordingly, we hold that the observation in Tara Kumar Pradhan (supra) to the effect that an application or a Regular First Appeal cannot be deemed to be filed until all defects are cured and that the date of filing will

be the date when the petition is placed before the Registry sans defects and not prior to that does not reflect the correct position in law.

24. Registry will now list the appeal along with the IA for consideration before an appropriate Single Bench, as agreed upon, on 07.04.2020.

**Judge**

**Chief Justice**

jk/bp/