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M/S. INDIA HOUSE
v.
KISHAN N. LALWANI

DECEMBER 18, 2002

B

[R.C. LAHOTI AND BRIJESH KUMAR, JJ.]

*Tamil Nadu Building (Lease & Rent) Control Act, 1960; Section 25(2)
Proviso:*

C

Period of Limitation—Extension of—Held, Discretionary power of the Court could be exercised to condone delay in filing petition under Section 5 Limitation Act, 1963 when such delay does not exceed one month over and above the period liable to be excluded as time requisite for obtaining certified copy of order appealed against.

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Limitation Act, 1963; Sections 12(2) & 29(2):

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Exclusion of time lost in obtaining copy of the order/judgment—Benefit under Section 12(2), Limitation Act—Applicability of—Held, it is statutory obligation of the Court to extend such benefits to exclude time lost in obtaining copy of the order/judgment impugned—Such benefit is also applicable while counting period of limitation prescribed under any special law/local law—Time lost in obtaining copy liable to be excluded though application for copy was not made within prescribed period of limitation.

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Respondent filed two revision petitions against appellate order of the High Court on 25.9.2001. Respondent applied for certified copy belatedly on 9.11.2001 after expiry of limitation period for filing revision petition as per provision of Law under the Tamil Nadu Buildings (Lease and Rent) Control Act and the same was received on 24.12.2001. High Court under its discretionary power u/s 29 of the Act condoned the delay in filing revision petition on sufficient cause shown by the respondent and also considered exclusion of time lost in obtaining copy of the order by extending benefits of Section 12(2) of the Limitation Act. Hence these appeals.

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Dismissing the appeals, the Court

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HELD: 1.1. It is well-settled that by virtue of sub-section (2) of Section

29 of the Limitation Act the provisions of Section 12 are applicable for computing the period of limitation prescribed by any special or local law. The period of limitation statutorily prescribed has to be strictly adhered to and cannot be relaxed or departed from for equitable considerations. At the same time full effect should also be given to those provisions which permit extension or relaxation in computing period of limitation as contained in Section 12 of the Act. The underlying purpose of these provisions is to enable a litigant seeking enforcement of his right to any remedy to do so effectively and harsh prescription of time-bar not unduly interfering with the exercise of statutory rights and remedies and Section 12 has always been liberally interpreted.

[526-C-E]

D.P. Mishra v. Kamal Narayan Sharma and Anr., [1970] 2 SCC 369 and *Malojirao Narsingh Rao v. The State of Madhya Pradesh*, [1969] 2 SCC 723, relied on.

1.2. The time requisite for obtaining a copy of the impugned decree, sentence or order has been held liable to be excluded from computing the period of limitation although such copy may not necessarily be required to be filed along with appeal, application or memo of representation or review. Yet to make up one's mind for pursuing the next remedy, for obtaining legal opinion and for appropriately drafting the petition by finding out the grounds therefor the litigant must be armed with such copy. Without the authentic copy being available the remedy in the higher forum or subsequent jurisdiction may be rendered a farce. No distinction is drawn between decrees or orders pronounced on the original side or the appellate or revisional side. No application is required to be made seeking the benefit of Section 12 of Limitation Act; it is the statutory obligation of the Court to extend the benefit where available. The language of sub-section (2) of Section 12 is couched in a form mandating the time requisite for obtaining the copy being excluded from computing the period of limitation. [526-E, 527-A, 526-F, G]

1.3. Depending on the facts and circumstances of a given case, the Court may be called upon to exercise its discretionary power to condone the delay occasioned by the time lost either before applying for certified copy or after the delivery thereof. There is no rider or an additional qualification in the language of sub-section (2) of Section 12 which the Legislature itself has chosen not to provide and thereby scuttle the operation of Section 12(2).

[527-E; 528-F]

Murlidhar Shrinivas v. Motilal Ramcoomar, AIR (1937) Bombay 162,

A relied on.

A.D. Partha Sarthy v. State of Andhra Pradesh, AIR (1966) SC 38, distinguished.

B 2. So far as the applicability of Section 5 of the Limitation Act is concerned the power of the Court to extend the prescribed period of limitation on the ground of availability of sufficient cause for not preferring the appeal within the prescribed period, within the meaning of Section 5 of the Limitation Act, stands circumscribed by the limitation imposed on the power of the High Court by the proviso to sub-section (2) of Section 25 of the Tamil Nadu Building (Lease and Rent) Control Act. The discretionary power to condone the delay in filing the revision can be exercised for condoning any delay which does not exceed one month over and above the period liable to be excluded from computing the period of limitation by reference to Sections 4 to 24 of the Limitation Act. As the total time, excluding the time requisite for obtaining the copy, does not exceed 60 days, High Court has rightly condoned the delay in filing the revision petitions. [528-H; 529-A-C]

D CIVIL APPELLATE JURISDICTION : Civil Appeal Nos. 8548-8549 of 2002.

E From the Judgment and Order dated 19.4.2002 of the Madras High Court in CMP Nos. of 3067 and 3068 of 2002 in C.R.P.S.R. Nos. 8 and 12 of 2002.

V. Prabhakar and M.K.D. Namboodiri for the Appellant.

P.S. Narasimha, Ananga Bhattacharya and Sridhar P., for the Respondent

F The Judgment of the Court was delivered by

R.C. LAHOTI, J. Leave granted.

G These appeals by special leave lay challenge to an order of the High Court whereby two civil revisions filed by the respondent herein under Section 25 of the Tamil Nadu Buildings (Lease and Rent) Control Act, 1960 (hereinafter, the Tamil Nadu Act, for short) feeling aggrieved by a common order disposing of two appeals, have been held to have been filed within the period of limitation. The High Court has condoned the delay in filing the revision petitions subject to payment of Rs. 750 by way of costs by the petitioner to the respondent before it. The respondent in the High Court has filed these two appeals by special leave.

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A (2) Where any special or local law prescribes for any suit, appeal
 or application a period of limitation different from the period prescribed
 by the Schedule, the provisions of section 3 shall apply as if such
 period were the period prescribed by the Schedule and for the purpose
 of determining any period of limitation prescribed for any suit, appeal
 B or application by any special or local law, the provisions contained in
 sections 4 to 24 (inclusive) shall apply only in so far as, and to the
 extent to which, they are not expressly excluded by such special or
 local law.”

C It is well-settled that by virtue of sub-Section (2) of Section 29 of the
 Limitation Act the provisions of Section 12 are applicable for computing the
 period of limitation prescribed by any special or local law See *D.P. Mishra v.*
Kamal Narayan Sharma and Anr., [1970] 2 SCC 369 and *Malojirao*
Narsingh Rao v. The State of Madhya Pradesh [1969] 2 SCC 723. The period
 D of limitation statutorily prescribed has to be strictly adhered to and cannot
 be relaxed or departed from for equitable consideration. At the same time full
 effect should also be given to those provisions which permit extension or
 relaxation in computing period of limitation such as those contained in Section
 12 of the Limitation Act. The underlying purpose of these provisions is to
 E enable a litigant seeking enforcement of his right to any remedy to do so
 effectively and harsh prescription of time-bar not unduly interfering with the
 exercise of statutory rights and remedies. That is why Section 12 has always
 been liberally interpreted. To wit, the time requisite for obtaining a copy of
 the impugned decree, sentence or order has been held liable to be excluded
 F from computing the period of limitation although such copy may not necessarily
 be required to be filed along with appeal, application or memo of representation
 or review. No distinction is drawn between decrees or orders pronounced on
 the original side or the appellate or revisional side. No application is required
 to be made seeking the benefit of Section 12 of Limitation Act; it is the
 G statutory obligation of the Court to extend the benefit where available.
 Although the language of sub-Section (2) of Section 12 is couched in a form
 mandating the time requisite for obtaining the copy being excluded from
 computing the period of limitation, the easier way of expressing the rule and
 applying it in practice is to find out the period of limitation prescribed and
 then add to it the time requisite for obtaining the copy-the date of application
 H for copy, and the date of delivery, thereof both included-and treat the result
 of addition as the period of limitation. The underlying principle is that such
 copy may or may not be required to accompany the petition in the jurisdiction
 sought to be invoked yet to make up one's mind for pursuing the next remedy,

for obtaining legal opinion and for appropriately drafting the petition by finding out the grounds therefor the litigant must be armed with such copy. Without the authentic copy being available the remedy in the higher forum or subsequent jurisdiction may be rendered a farce. All that sub-Section (2) of Section 12 of the Limitation Act says is the time requisite for obtaining the copy being excluded from computing the period of limitation, or, in other words, as we have put it hereinabove, the time requisite for obtaining the copy being added to the prescribed period of limitation and treating the result of addition as the period prescribed. In adopting this methodology it does not make any difference whether the application for certified copy was made within the prescribed period of limitation or beyond it. Neither it is so provided in sub-Section (2) of Section 12 of the Limitation Act nor in principle we find any reason or logic for taking such a view.

If we were to accept the submission of the learned counsel for the appellant yet another consequence would follow. Section 5 of the Limitation Act or the power to condone delay by reference to proviso appended to Section 25(2) of the Act shall be exercisable for a period subsequent to the obtaining of the certified copy of the impugned order but not to the period before it. Such is not the prohibition contained in any of the said provisions. Depending on the facts and circumstances of a given case, the Court may be called upon to exercise its discretionary power to condone the delay occasioned by the time lost either before applying for certified copy or after the delivery thereof.

In *Murlidhar Shrinivas v. Motilal Ramcoomar*, AIR (1937) Bombay 162, the Full Bench, speaking through Beaumont, CJ, held that the Court cannot impose upon statutory right of an appellant a restriction not warranted by the Act and a rule providing that no time shall be allowed for obtaining a copy of the decree unless such copy be applied for within specified days from the date of the decree would be *ultra vires*. In computing the time for appeal from a decree it is legitimate (in a proper case) to exclude the period requisite for obtaining a copy of the decree even when no application for such copy, was made till after the expiration of the time for appeal. A Full Bench of Madras High Court presiding over by Srinivasan, J. (later a Judge of the Supreme Court) held that though the application for certified copies of judgment and decree was made after prescribed period of limitation the period was liable to be excluded in all cases depending on whether sufficient cause was shown or not. We find ourselves in respectful agreement with the view so taken by the Full Benches of Bombay and Madras High Courts.

- A** The learned counsel for the appellant relied on a decision of this Court in *A.D. Partha Sarthy v. State of Andhra Pradesh*, AIR [1966] SC 38. The facts of the case show that an application for obtaining certified copy of the relevant order was made even before the order was pronounced. The question arising for decision before the Court was whether the time between the date of the application and the date of pronouncement of the impugned order could be treated as the time requisite within the meaning of Section 12(2) of Limitation Act. The Court ruled against the exclusion of such time. The time running between the date of application and the date of pronouncement of order when the litigant chooses to make an advance application in anticipation of the pronouncement of the decision of the Court cannot by any stretch of imagination be called the time requisite for obtaining the copy. However, it is in that context that the Court observed that the object of the Legislature was to enable the party to exclude the time requisite for obtaining a copy of the order *after the period of limitation has commenced*. While drafting the reasoning in support of the view taken by it the Court went on to observe—
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- C**
- D** “if the time taken for obtaining the 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 quite 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.” Suffice it to say that such an observation was uncalled for to decide the issue arising for decision before the Court and therefore has to be treated as a mere observation having no precedential value and at the most an obiter. We cannot read a rider or an additional qualification in the language of sub-Section (2) of Section 12 which
- E**
- F** the Legislature itself has chosen not to provide and thereby scuttle the operation of Section 12(2) abovesaid. We are clearly of the opinion that while computing the period of limitation the time requisite for obtaining the copy has to be excluded without regard to the fact whether the copy was applied for before the expiry of period of limitation or not.
- G** So far as the applicability of Section 5 of the Limitation Act is concerned the power of the Court to extend the prescribed period of limitation on the ground of availability of sufficient cause for not preferring the appeal within the prescribed period, within the meaning of Section 5 of the Limitation Act, stands circumscribed by the limitation imposed on the power of the High
- H** Court by the proviso to sub-Section (2) of Section 25 of the Act. The

discretionary power to condone the delay in filing the revision can be exercised for condoning any delay which does not exceed one month over and above the period liable to be excluded from computing the period of limitation by reference to Sections 4 to 24 of the Limitation Act. A

Computing the time within which the revisions were filed in the High Court, consistently with the law as stated hereinabove, the revisions by the respondent were filed within a period of 53 days. As the total time, excluding the time requisite for obtaining the copy, does not exceed 60 days, the High Court had power to condone the delay in filing the revision petitions. No fault can be found with the discretionary jurisdiction so exercised by the High Court. B C

The appeals are held devoid of any merit and are dismissed. Costs easy.

S.K.S.

Appeals dismissed.