

A P.A. OOMMEN
v.
MORAN MAR BASELIUS MARTHOMA

JULY 17, 1992

B [N.M. KASLIWAL AND K. RAMASWAMY, JJ.]

Limitation Act, 1963 :

C S.12—Exclusion of time taken in obtaining copy of judgment appealed from—Applicability of Order XLI Rule 1—Suit tried alongwith another suit—Common judgment dismissing the suits—Appeal—Time taken in obtaining copy of judgment by plaintiffs in one suit—Whether plaintiffs in the other suit entitled to claim the benefit for purposes of limitation.

Code of Civil Procedure, 1908 :

D Order XLI Rule 1—Object and applicability of—Whether controls the provisions under the Limitation Act.

E The appellant and Respondents Nos. 6 and 9 filed a suit in the District Court. The suit was transferred to a Sub-Judge, who tried it along with another suit filed by other plaintiffs. By a common judgment he dismissed the transferred suit as also the other suit. The plaintiffs in the other suit applied for a certified copy of the judgment and after obtaining the same filed an appeal before the High Court. The plaintiffs in the transferred suit also applied for a certified copy of judgment, but the application came to be dismissed for non-remittance of printing charges. F However they obtained a copy of decree and filed an appeal before the High Court beyond the period of limitation. Copy of the judgment of the Sub-Judge with the seal of the Court was also filed. It was explained that they were under *bona fide* belief that the copy of the judgment obtained by the plaintiffs in the other suit could be made use of and that it was not G necessary for them to obtain the copies of judgment separately. It was pleaded that the time taken in obtaining certified copies of judgment by the plaintiffs in the other suit should also be excluded in the case of the plaintiffs in the transferred suit. The High Court rejected the application and consequently did not accept the appeal. It was held that the plain- H tiffs/appellants could not take advantage of the certified copy of the

judgment obtained by another person. Being aggrieved against the said orders of the High Court, one of the plaintiffs/appellants preferred the present appeal by special leave. A

On behalf of the appellant, it was contended that since the plaintiffs in the other suit have already filed a certified copy of the judgment, the filing of the same by the plaintiffs in the transferred suit should have been dispensed with; that the proviso to Order XLI Rule 1 CPC clearly applied to the case; that a memorandum of appeal need not necessarily be accompanied by a certified copy of the judgment obtained by the appellant himself; and that the copy of the common judgment obtained by the plaintiffs in the other suit could be used by the plaintiffs in the transferred suit and in this view of the matter, the appeal filed was within time. B C

The Respondents contended that the opposite party has neither filed any separate application for condonation of delay nor urged any ground in support of their claim except stating that they *bonafide* believed they could make use of the copy of common judgment obtained by the plaintiffs in the other suit. D

Dismissing the appeal, this Court

HELD 1. The entire purpose of introducing the proviso to Order XLI Rule 1 CPC, was to avoid extra expenses where more cases than one were disposed of by common judgment and the Appellate Court was authorised to dispense with the necessity of filing more than one copy of the Judgment. It was no doubt made clear by adding the proviso to Order XLI Rule 1 CPC that the filing of the certified copies of the judgment could be dispensed with where two or more appeals are filed against the common Judgment by the same appellant or by different appellants. It only deals with the provision as to what documents should be accompanied along with the memorandum of appeal. The provision has no relevance nor can control the provisions of limitation which are contained separately under the Limitation Act, 1963. [554-E,F] E F

2. Admittedly the plaintiffs filed the memorandum of appeal in the High Court against the Judgment and decree passed by the Subordinate Judge. The memorandum of appeal was accompanied by a certified copy of the decree as well as a printed copy of the common judgment. The appellant cannot claim any benefit of the proviso to Order XLI Rule 1 CPC G H

A and as a consequence thereof the benefit of the time spent in obtaining the certified copy of the judgment by the plaintiffs in the other suit. The proviso permits the Appellate Court to dispense with the filing of more than one copy of the judgment in order to save the expenses, but in the present case the plaintiffs had already filed a printed copy of the judgment of the Subordinate Judge and as such there was no question of seeking any order from the Appellate Court for dispensing with the filing of more than one copy of the judgment. [554-G,H; 555-A,B]

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C 3. The appellant and respondents Nos. 6 to 9 who were plaintiffs in the transferred suit had filed certified copy of the decree under challenge along with the memorandum of appeal and the time in obtaining the certified copy of the decree can be excluded in computing the limitation and there is no dispute that such time has been excluded but even after excluding such time the appeal was barred by limitation. So far as the printed copy of the judgment filed along with the memorandum of appeal, it did not contain the necessary particulars regarding the person who made the application, the date of application, the date of issue, the date notified for receiving the same as required in Rules 253 and 254 of the Civil Rules of practice in order to entitle the appellants to claim extension of time under Section 12(3) of the Limitation Act, 1963. [555-C-F]

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E CIVIL APPELLATE JURISDICTION : Civil Appeal No. 1819 of 1992.

From the Judgment and Order dated 9.2.1984 of the Kerala High Court in C.M.P. No. 32544 of 1983.

F E.M.S. Anam for the Appellant.

G.Viswanatha Iyer, N. Sudhakaran and Ms. K.Prasanthi for the Respondent.

The Judgment of the Court was delivered by

G **KASLIWAL, J.** A short but interesting question of law is involved in this appeal. The appellant and respondents Nos. 6 to 9 filed a suit in the District Court Alleppy which was transferred to the Court of Subordinate Judge, Mavelikara where the suit was numbered as O.S. No. 105 of 1980. This suit was jointly tried along with O.S. No. 21 of 1979 filed by other plaintiffs. The Subordinate Judge by a common Judgment dated 27.8.1982

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dismissed both the suits. The plaintiffs in O.S. No. 21 of 1979 applied for certified copy of the Judgment on 27.8.1982 itself while the plaintiffs in O.S. No. 105 of 1980 applied for certified copy of the Judgment and decree on 28.8.1982. The certified copy of the Judgment was delivered to the plaintiffs in O.S. No. 21 of 1979 on 20th August, 1983 and they filed First Appeal No.504 of 1983 in the High Court on 31.10.1983. In the case of the applications filed by the plaintiffs in O.S. No. 105 of 1980 the office called upon them to produce copying sheets for the decree and printing charges for the Judgment. Copying sheets were produced on 10.3.1983 but the printing charges for the Judgment were not remitted and as such the application for copy of the Judgment was dismissed on 17.3.1983. The copy of the decree being ready was notified for delivery on 22.3.1983 but the same was actually taken on 10.6.1983. The appellant and respondents Nos. 6 to 9 filed appeal in the High Court on 5.11.1983 and along with the memo of appeal a printed copy of the Judgment with the seal of the Court was also filed. There was no indication in the printed copy of the Judgment as to on whose application the same was issued, or the date of application or the date of production of printing charges or the date notified for receiving the same or when the same was delivered and other details necessary to be mentioned in a certified copy as required under Rule 253 and 254 of the Civil Rules of Practice. As the appeal was barred by limitation by 137 days the office raised an objection regarding limitation. The Registry pointed out some more defects. The papers as such were returned for curing the defects. The Advocate appearing for the appellants again submitted the appeal with the following endoresment "The above appeal is filed along with an application to receive the same to file. The above application may be sent to the Bench for orders. Other defects are cured". The application referred to above was registered as C.M. No. 32544 of 1983. The application was also supported by an affidavit. In the affidavit it was stated that the original suit No. 105 of 1980 was tried and heard along with O.S. NO. 21 of 1979. The Learned Subordinate Judge passed a consolidated Judgment in the two suits. The printed copies of the Judgment rendered in the case was applied for by the plaintiffs in the other connected suit O.S. No.21 of 1979, and so the appellants (plaintiffs in O.S. No. 105 of 1980) were led to believe that it would not be necessary to obtain the printed copies of the Judgment separately in O.S. No. 105 of 1980. It was further averred in the affidavit that the appellants *bonafidely* though that the copies that would be made available to the plaintiffs in O.S. No. 21 of 1979 could be

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A made use of by the petitioners for preferring their appeal. The appellants in substance placed reliance on Section 12 (3) of the Limitation Act, 1963 and argued that the time taken for obtaining the certified copies of the Judgment by the plaintiffs in O.S. No. 21 of 1979 should also be allowed to be excluded in the case of the appellants as well.

B Learned Single Judge of the High Court issued notice on the application C.M.P. No. 32544 of 1983 and after hearing the other side dismissed the same. Learned Single Judge by Judgment dated 9.2.1984 dismissed the CMP. No. 32544 of 1983 and consequently the appeal filed by the appellants was not accepted on the file of the High Court. The Learned Judge
C took the view that the plaintiffs/appellants cannot take advantage of the certified copy of the Judgment obtained by another person. The Learned Judge also held that in calculating the period of limitation the Court can reckon time only on the basis of the certified copy of the Judgment and decree produced in the case. Aggrieved against the aforesaid Judgment of
D the High Court one of the plaintiffs in O.S. No. 105 of 1980 has come in appeal by grant of special leave.

In order to appreciate the controversy it would be necessary to reproduce the relevant provisions of Order XLI Rule 1 C.P.C. as well as the provisions of Section 12 of the Limitation Act.

E SECTION 12 (2) & (3) OF THE LIMITATION ACT reads as under :

F (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.

G (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 on which the decree or order is founded shall also be excluded.

O.XLI RULE 1 C.P.C. WITH PROVISIO reads as under :

H O.XLI : APPEALS FROM ORIGINAL DECREES :

1. Form of appeal. What to accompany memorandum. A

(1) Every appeal shall be preferred in the form of a memorandum signed by the appellant or his pleader and presented to the Court or to such officer as it appoints in this behalf. The memorandum shall be accompanied by a copy of the decree appealed from and (unless the Appellate Court dispenses therewith) of the judgment on which it is founded. B

Provided that where two or more suits have been tried together and a common judgment has been delivered therefor and two or more appeals are filed against any decree covered by that judgment, whether by the same appellant or by different appellants, the Appellate Court may dispense with the filing of more than one copy of the Judgment. C

It has been argued on behalf of the appellant that the High Court committed an error in not entertaining the appeal under the proviso to Order XLI Rule 1 of the Code of Civil Procedure. It was submitted that the High Court should have accepted and admitted the appeal for hearing as a common Judgment was delivered in O.S. No. 21 of 1979 and O.S. No. 105 of 1980 and the appeal filed by the plaintiffs in case O.S. No. 21 of 1979 having been admitted the High Court should have dispensed with the filing of a certified copy of the Judgment by the plaintiffs in O.S. No. 105 of 1980. The proviso to Order XLI Rule 1 C.P.C. clearly applied to the case of the appellant and the High Court was wrong in not applying the same inspite of the specific prayer made in this regard. It was further contended that a memorandum of appeal need not necessarily accompany a certified copy obtained by the appellant himself. Thus the advantage of the printed copy obtained by the plaintiffs in O.S. No. 21 of 1979 could be taken use of by the plaintiffs in O.S. No 105 of 1980 in filing an appeal and if the same is allowed, the appeal filed by the plaintiffs in O.S. No. 105 of 1980 was within time. D E F

On the other hand Learned counsel appearing for the contesting respondents placed reliance on the Judgment of the Learned Single Judge. It was submitted that neither any separate application for condonation of delay was filed nor any ground was made out in the affidavit filed by the 9th respondent who was himself an Advocate of long standing, in support of the C.M.P. No. 32544 of 1983. Only a bald statement was made in the affidavit that they *bona fide* believed that the copies that would be made G H

A available to the plaintiffs in O.S. No. 21 of 1979 on the file of Court of the Subordinate Judge, Mavelikara could be made use of for preferring the appeal.

B We have given our careful consideration to the arguments advanced by Learned Counsel for the parties and have thoroughly perused the record. The proviso to order XLI Rule 1 C.P.C. was added by Section 87 of C.P.C. Amendment Act, 1976 w.e.f. 1.2.1977. The statement of Objects and Reasons for the above amendment are given as under :

OBJECTS AND REASONS

C "Where two or more suits or appeals are disposed of by a common Judgment, the requirement of Order XLI that the memorandum of appeal should be accompanied by a copy of the judgment occasions extra expenses. It is intended to meet with this difficulty by providing that where more cases than one are disposed of by common judgment the appellate court may dispense with the necessity of filing of more than one copy of the judgment."

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E Thus the entire purpose of introducing the above provision was to avoid extra expenses where more cases than one were disposed of by common Judgment and the Appellate Court was authorised to dispense with the necessity of filing more than one copy of the Judgment. It was no doubt made clear by adding the proviso to Order XLI Rule 1 C.P.C. that the filing of the certified copies of the Judgment could be dispensed with where two or more appeals are filed against the common Judgment by the same appellant or by different appellants. The above Order XLI Rule 1

F contained in the Code of Civil Procedure only deals with provision as to what documents should be accompanied along with the memorandum of appeal. This provision has no relevance nor can control the provisions of limitation which are contained separately under the Limitation Act, 1963. Part (III) of the Limitation Act, 1963 provides for computation of period of limitation and Section 12 deals with exclusion of time in legal proceedings with which we are concerned in the present case. So far as the case in hand before us is concerned, the admitted facts are that the plaintiffs in

G O.S. No. 105 of 1980 filed the memorandum of appeal in the High Court against the Judgment and decree passed by the Subordinate Judge Mavalikar dated 27.8.1982. The memorandum of appeal was accompanied

H by a certified copy of the decree as well as a printed copy of the common

Judgment. We are at pains to understand as to how the appellant can claims any benefit of the proviso to Order XLI Rule 1 C.P.C. and as a consequence thereof the benefit of the time spent in obtaining the certified copy of the Judgment by the plaintiffs of O.S. No. 21 of 1979. The proviso permits the Appellate Court to dispense with the filing of more than one copy of the Judgment in order to save the expenses, but in the present case the plaintiffs in O.S. No. 105 of 1980 had already filed a printed copy of the Judgment of the Subordinate Judge and as such there was no question of seeking any order from the Appellate Court (High Court in the present case) for dispensing with the filing of more than one copy of the Judgment. The only question then remains to be considered is whether the appellant is entitled to the benefit of Section 12 of the Limitation Act. The appellant and respondents Nos. 6 to 9 who were plaintiffs in O.S.No.105 of 1980 had filed certified copy of the decree under challenge along with the memorandum of appeal and the time in obtaining the certified copy of the decree can be excluded in computing the limitation and there is no dispute that such time has been excluded but even after excluding such time the appeal is barred by limitation. So far as the printed copy of the Judgment filed with the memorandum of appeal it does not contain the necessary particulars regarding the person who made the application, the date of application, the date of issue, the date notified for receiving the same as required in Rules 253 and 254 of the Civil Rules of practice in order to entitle the appellants to claim extension of time under Section 12(3) of the Limitation Act. Confronted with this difficulty, the appellant and other plaintiffs in O.S. No. 105 of 1980 sought to rely on the proviso to Order XLI Rule 1 C.P.C. and to get the advantage of the time taken by the plaintiffs in O.S. No. 21 of 1979 in obtaining the certified copy of the common Judgment. We are clearly of the view that there is no justification nor any basis for claiming such benefit and the High Court rightly dismissed the CMP. No. 32544 of 1983. It is, however made clear that we are upholding the Judgment of the High Court on different grounds and we are not expressing any opinion on the merits of the questions of law decided by the Learned Single Judge. We also do not find it necessary to advert to any case law referred in the Judgment of the High Court or cited before us, as in the facts and circumstances of the case there is no basis or justification at all for the applicability of the proviso to Order XLI Rule 1 C.P.C. itself. Thus when the main bedrock of the entire case of the plaintiffs appellants of O.S. No. 105 of 1980 falls to the ground the question of

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A seeking any benefit, therefore, does nor arise.

In the result we find no force in this appeal and the same is dismissed with no order as to costs.

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Appeal dismissed.