

PETITIONER:
MAHANT BIKRAM DASS CHELA

Vs.

RESPONDENT:
FINANCIAL COMMISSIONER, REVENUE, PUNJAB, CHANDIGARH AND OTHER

DATE OF JUDGMENT 03/08/1977

BENCH:
CHANDRACHUD, Y.V.
BENCH:
CHANDRACHUD, Y.V.
KAILASAM, P.S.

CITATION:
1977 AIR 2221 1978 SCR (1) 262
1977 SCC (4) 69
CITATOR INFO :
R 1978 SC 335 (11)

ACT:
Limitation Act 1963, Sections 5, 117-Whether requirement of filing sufficient copies of memorandum of appeal mandatory-Whether not filing of file copies renders appeal time-barred-Civil Procedure Code, 0.41 r. 1-Rules and orders of Punjab High Court-Chapter I Volume V.

HEADNOTE:

The appellants filed two applications for the ejectment of the respondents on the ground that they failed to pay rent without sufficient cause. These applications were dismissed first by the Assistant Collector and then by the Collector. The appellant then filed two revision applications to the Commissioner who made a recommendation to the Financial Commissioner to the effect that the orders of the Collector and the Assistant Collector be set aside and a decree for ejectment be passed against the respondents. Financial Commissioner passed a decree evicting the respondents from the land in one revision application. The the other Revision Application the Financial Commissioner held that the ejectment petition filed by the appellant had become infructuous in view of the fact that the land was required by the Amritsar Improvement Trust which had already taken possession thereof. The question of their ejectment did not arise for consideration.

The appellant challenged the decision of the Financial Commissioner by filing a writ petition in the Punjab & Haryana High Court. The writ petition was dismissed by a single Judge on 10th November 1970. The appellant filed an appeal against that judgment under clause 10 of Letters Patent to a Division Bench of the High Court.

The Memorandum of Letters Patent Appeal against that judgment was lodged by the appellant on December 23, 1970, which was within 30 days from the date of the judgment appealed from. The Letter Patent Appeal came up for admission on February 24, 1971 when Division Bench issued notice to the respondent. Respondents raised an objection that the appeal was barred by limitation on the ground that though the memorandum of appeal was filed within 30 days of the date of the judgment of single Judge, it was not accom-

panied by 3 sets of documents which are required to be filed under the rules of the High Court. Counsel for appellant then asked for an adjournment for filing an application under s. 5 of the Limitation Act 1963 for condonation of delay.

The matter was referred for opinion of a full Bench. The question which the Division Bench, inter alia, referred to the Full Bench was as under :

"Can an appeal under clause 10 of the Letters Patent be held to be incomplete or 'no appeal in the eye of law' merely because it is not accompanied by the requisite three spare copies of the paper book

This question was answered by the full Bench thus :

"the above discussion leads to the conclusion that if an appeal under clause 10 of the Letters Patent does not comply with the mandatory provision of Rule 3 of Chapter 2-e of the High Court Rules by not filing 3 sets of typed copies of the documents, it has to be regarded as no appeal in the eyes of the law and shall not be deemed to be filed on that day. it shall be deemed to have been filed only on the day, when it is complete in all respects as 'required by the Rules and is accepted to registration by the Registry."

After deciding the question the Full Bench remitted the appeal to Division

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Bench and directed the Division Bench to deal with the application filed by the appellant for condonation of delay caused in filing the appeal.

The Division Bench then took up the appeal for consideration of the question whether the delay caused in filing the appeal should be condoned under s. 5 of Limitation Act. It held that the appellant had failed to make out a case for condonation of delay and, therefore, dismissed it on the ground that it was barred by limitation.

Allowing an appeal by certificate,

HELD : For deciding the question whether the appeal is preferred in time, the relevant provisions of the Limitation Act, the Civil Procedure Code and the Rules and Orders of the High Court must be noticed. [266C]

Article 117 of Limitation Act 1963 prescribes a period of 30 days limitation for filing an appeal from a decree or order of any High Court to Supreme Court. The time for filing such an appeal runs from the date of the decree or order appealed from. Section 5 of Limitation Act provides for extension of the prescribed period of limitation if the appellant satisfies the Court that he had sufficient cause for not preferring the appeal within that period. [266C-D]

Order 41, Rule 1(1) of Civil Procedure Code requires that 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 that behalf. The memorandum has to be accompanied by a copy of the decree appealed from and of the judgment on which it is founded, unless the appellate court dispenses with the production of the judgment. If these conditions are fulfilled, the appeal is preferred validly so far as the requirements of Civil Procedure Code are concerned on the date on which it is presented. A memorandum which does not satisfy these requirements may, under Rule 3(1) be rejected or returned to the appellant for the purpose of being amended within a time

to be fixed by the Court or be amended then and there. [266D-F]

Chapter I of Volume V of Rules and Orders of Punjab High Court, which is entitled "Judicial Business" deals under Part A with the presentation and reception of appeals, petitions and applications for review and revision. Rule 4 provides :

"No memorandum of appeal preferred under clause 10 of Letters Patent shall be entertained if presented after the expiration of 30 days from the date of the judgment appealed from unless the admitting Bench in its discretion, for good cause shown, grants further time for presentation." [266G-H]

By Rule 5(1) the Deputy Registrar may return for amendment and refile within a time not exceeding 10 days at a time, and 40 days in the aggregate, to be filed by him any memorandum of appeal for the reason specified in Order XLI, Rule 3, Civil Procedure Code, if the memo of appeal is not amended within the time allowed by the Deputy Registrar under sub-rule (1) it has to be listed for orders before the Court under sub-rule (2). [267AB]

Chapter 2-e, Part which deals with "Preparation of Paper Books in L.P. Appeals" provides by rule 3 that no appeal under clause 10 of the Letters Patent be received by the Deputy Registrar unless it is accompanied by three typed copies of (a) the memorandum of appeal; (b) the judgment appealed from and (c) the paper book which was before the judge from whose judgment the appeal is preferred. [267B-C]

In the instant case, only one set of documents was filed along with the memorandum of the Letters Patent Appeal. Nevertheless, the Deputy Registrar did receive the appeal on December 23, 1970. He accepted the remaining two sets of the documents required to be filed under Rule 3 on January 30, 1971. [267C]

HELD FURTHER : Rule 3 is directory and not mandatory. Rule 3 being directory in nature, substantial compliance therewith is enough to meet its requirements. There was in this case substantial compliance with the rule and it was erroneous to treat the appeal as being time barred by limitation

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Since one complete set of three documents specified in Rule 3 was filed along with the memorandum, the failure to., file two additional set of document is a mere irregularity which it was within the discretion of the High Court to condone. [267D, 268C]

State of Punjab v. Shamlal Murari [1976] 2 SCR 82 followed. The submission of the respondent that this court should not interfere with the order of High Court passed in its discretionary powers negatived; since the High Court exercised its discretion on a fallacious supposition that the appeal was time-barred. [267H, 268A]

Section 5 of the Limitation Act is a hard-task master and judicial interpretation has encased it within a narrow compass. A large measure of case-law has grown around s. 5, its high lights being that one ought not easily take away a right which has accrued to a party by lapse of time and that, therefore, a litigant who is not vigilant about his rights must explain every day's delay. These and similar considerations which influence the decision of s. 5 application are out of place in cases where the appeal itself is preferred within the period of limitation but there is an irregularity in presenting it. [268G-H. 269A]

JUDGMENT:

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 1822 of 1975.

From the Judgment and Order dated 26-9-1974 of the Punjab and Haryana High Court in Letters Patent Appeal No. 65 of 1971.

H. L. Sibbal, S. K. Jain and S. M. Jain for the Appellant.
N. C. Sikri, A. K. Sikri and A. D. Sikri for Respondents 4-6

The Judgment of the Court was delivered by CHANDRACHUD, J. The appellant, Mahant Bikram Dass Chela, filed two applications for eviction of respondents 4 to 6 (hereinafter called 'the respondents'), on the ground that they had committed default in the payment of rent. A compromise was arrived at between the parties on March 31, 1969, under which it was agreed that the respondents should pay to the appellant a sum of Rs. 11,872 by March 31, 1959 and the balance in six-monthly installments of Rs. 1,000/- each. Respondents committed default in the payment of future instalments, upon which the appellant filed two applications on April 2, 1962 for their ejectment on the ground that they had failed to pay rent without sufficient cause. One of these applications covered an area of 117 Kanals and the other of 76 kanals odd. . . . These applications were dismissed first by the Assistant Collector and in appeal by the Collector. The appellant then filed revision applications to the Commissioner, who, on March 1, 1965 made a recommendation to the, Financial Commissioner to the effect that the orders of the Collector and the Assistant Collector be set aside and a decree for ejectment be passed against the respondents. By his order dated November 26, 1965 the Financial Commissioner accepted the recommendation with regard to the area of 76 Kanals and passed a decree evicting the respondents from that land. That order has become final.

In the other Revision pertaining to 117 Kanals, the Financial Commissioner by an order dated November 4, 1965 held that the ejectment-petition filed by the appellant had become infructuous in view of the fact that the land was acquired by the Amritsar Improvement Trust, which had already taken possession thereof. According

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to the Financial Commissioner, since the Improvement Trust had taken possession of the land, respondents ceased to be tenants and the "question of their ejectment did not arise for consideration.

The appellant then filed a Civil Writ, No. 1146 of 1966, in the Punjab & Haryana High Court, challenging the decision of the Financial Commissioner. The Writ Petition was dismissed by a learned Single Judge against which the appellant filed an appeal under clause 10 of the Letters Patent to a Division Bench of the High Court.

The Single Judge had dismissed the Writ Petition on November 27, 1970. The Memorandum of the Letters Patent Appeal against that judgment was lodged by the appellant on December 23, 1970, which was within 30 days from the date of the judgment appealed from. The Letters Patent appeal came up for admission on February 24, 1971 when the Division Bench directed that a notice be issued to the respondents in regard to the admission of, the appeal. After completion of the record of the appeal, the matter was placed for hearing before a Division Bench. when the respondents raised an objection that the appeal was barred by limitation on the

ground that though the memorandum of appeal was filed within 30 days of the date of the judgment of the Single Judge, it was not accompanied by three sets of documents which are required to be filed under the rules of the High Court. Counsel for the appellant then asked for an adjournment for filing an application under s. 5 of the Limitation Act for condonation of the delay. Notice of the condonation application was given to the respondents and on hearing them, the Court framed seven questions and referred them for the opinion of a Full Bench. The questions, as they read, do not seem to call for such special treatment but it appears that though the matters in dispute relate to procedural regulations, learned Judges of the High Court had taken differing views which necessitated the reference to a Full Bench.

The Full Bench answered those questions by a judgment dated March 19, 1974 and remitted the appeal to the Division Bench for final disposal in the light of the answers given by it. It also directed the Division Bench to deal with the application filed by the appellant for condonation of the delay caused in filing the appeal.

Out of the seven questions referred to the Full Bench, we are concerned, principally, with question No. 7 only, which is as follows

"Can an appeal under clause 10 of the Letters Patent be held to be incomplete or "no appeal in the eye of law" merely because it is not accompanied by the requisite three spare copies of the paper-book?"

This question was answered by the Full Bench thus

"The above discussion leads to the conclusion that if an appeal under clause 10 of the Letters Patent does not comply with the mandatory provisions of Rule 3 of Chapter 2-C of the Rules by not filing three sets of typed copies of the documents, it has to be regarded as no appeal in the eye of law and shall not be deemed to have been filed on

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that day. It shall be deemed to have been filed only on the day when it is complete in all respects, as required by the Rules, and is accepted for registration by the Registry."

The Division Bench then took up the appeal for consideration of the question whether the delay caused in filing the appeal should be condoned under S. 5 of the Limitation Act. By a judgment dated September 26, 1964 it held that the appellant had failed to make out a case for condonation of the delay and, therefore, the appeal was liable to be dismissed on the ground that it was barred by limitation. The appeal was accordingly dismissed, against which the appellant has filed this appeal by certificate granted by the High Court.

For deciding the question whether the appeal was preferred in time, the relevant provisions of the Limitation Act, the Civil Procedure Code and the Rules and Orders of the Punjab High Court must be noticed.

Article 117 of the Limitation Act, 36 of 1963, prescribes a period of 30 days' limitation for filing an appeal from a decree or order of any High Court to the same Court. The time for filing such an appeal runs from the date of the decree or order appealed from. Section 5 of the Limitation Act provides for extension of the prescribed period of

limitation if the appellant satisfies the court that he had sufficient cause for not preferring the appeal within that period.

Order 41, Rule 1(1) of the, Code of Civil Procedure requires that 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 that behalf. The memorandum has to be accompanied by a copy of the decree appealed from and of the judgment on which it is founded, unless the appellate court dispenses with the production of the judgment. If these conditions are fulfilled the appeal is preferred validly, so far as the requirements of the Civil Procedure Code are concerned, on the date on which it is presented. A memorandum which does not satisfy these requirements may, under Rule 3(1), be rejected, or returned to the appellant, for the purpose of being amended within a time to be fixed by the Court or be amended then and there.

The Rules and Orders of the Punjab and Haryana High Court, which are contained in Volume V of the High Court publication, relate to "Proceedings in the High Court" and are made under the authority, inter alia, of the Letters Patent of the High Court. Chapter of the aforesaid volume, which is entitled "Judicial Business", deals by Part A with the presentation and reception of appeals, petitions and applications for Review and Revision. Rule 4 provides :

"No memorandum of appeal preferred under clause 10 of the Letters Patent shall be entertained if presented after the expiration of 30 days from the date of the judgment appealed from, unless the admitting Bench in its discretion, for good cause shown, grants further time for the presentation".

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By rule 5(1), the Deputy Registrar may return for amendment and refile within a time not exceeding 10 days at a time, and 40 days in the aggregate, to be fixed by him, any memorandum of appeal for the reason specified in Order XII, Rule 3, Civil Procedure Code. If the memorandum of appeal is not amended within the time allowed by the Deputy Registrar under sub-rule (1), it has to be listed for orders before the Court under sub-r. (2).

Chapter 2-C, Part C, which deals with "Preparation of paper books in Letters Patent Appeals", provided by rule 3 that no appeal under clause 10 of the Letters Patent will be received by the Deputy Registrar unless it is accompanied by three typed copies of (a) the memorandum of appeal; (b) the judgment appealed from; and (c) the paper-book which was before the Judge- from whose judgment the appeal is preferred.

In the instant case, only one set of documents was filed along with the Memorandum of the Letters Patent Appeal. Nevertheless, the Deputy Registrar did receive the appeal on Dec. 23, 1970. He accepted the remaining two sets of the documents required to be filed under rule,3 on January 30, 1971.

The judgment of the Full Bench, Bikram Dass v. Financial Commissioner,(1) in pursuance of which the Division Bench considered the question of condonation of delay and passed the impugned order came for consideration before this Court in State of Punjab v. Shamlal Murari.(2) It was held in that case that every minor detail specified in rule 3 does not carry a compulsory import, that the core of the matter is not that three copies of documents mentioned in the rule must be filed but that copies of all

the documents mentioned in the rule should be before the Court and that there should be no overemphasis on the filing of three copies of the documents at the time when the appeal is filed. The Court further observed that if no copy at all of any of the three items is furnished the result might be different but the failure to comply with the rule strictly is a mere irregularity which the Court, in the exercise of its discretion, can condone by granting further time for formal compliance with the rule. After thus holding that rule 3, though expressed in mandatory language, is directory in nature, the Court did not interfere with the order of the High Court refusing to extend the time and condone the delay, since that was a discretionary exercise of power by the High Court.

Following this decision, and in respectful agreement with the view that rule 3 is directory and not mandatory, we must hold that since one complete set of the three documents specified in rule 3 was filed along with the memorandum, the failure to file two additional sets of documents is a mere irregularity which it was within the discretion of the High Court to condone.

Counsel for the respondents contends that since the High Court has exercised its discretion in the matter by refusing to condone the delay, we should not interfere with the High Court's order for the

(1) A.I.R. [1975] Punjab. 1.

(2) [1976] 2 S.C.R. 82.

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same reasons for which this Court in Shamlals (supra) case refused to interfere with discretionary order. We are unable to accept that the decision in Shamlal's case can be a precedent on the question as to the limits of the power of this Court to interfere with a discretionary order. But quite apart from that consideration, there are valid reasons why we cannot sustain the order of the High Court refusing to condone, what is described as 'the delay caused in filing the Letters Patent Appeal.

The argument proceeds on the assumption that the appeal was presented beyond the period of limitation prescribed for filing Letters Patent Appeals. That is a fallacious assumption. The appeal was presented within 10 days, which is the period of limitation for filing Letters Patent Appeals. There was, however, an irregularity in presenting the appeal, namely, that the appeal was accompanied by only one set of the three items mentioned in rule 3 of Chapter 2-C which requires that three sets should be filed. Rule 3, being directory in nature, substantial compliance therewith is enough to meet its requirements. There was, in the instant case, substantial compliance with the rule and therefore, it was erroneous to treat the appeal as being barred by limitation.

The irregularity committed in filing only one set of the three documents mentioned in rule, 3 of Chapter 2-C was cured within a reasonable time by filing the remaining two sets on January 30, 1971. That was within 40 days of the date on which the appeal was preferred, which is the time which the Deputy Registrar can grant in the aggregate, under rule 5(1) of Chapter 1, for amendment of a memorandum of appeal which does not comply with Order 41, rule, 3, C.P.C. The Letters Patent Appeal was taken up by the Admitting Bench for admission on February 24, 1971 when the appeal was complete in all respects. There was then no question of granting further time for "presentation" of the appeal or for removing the irregularity from which the presentation of the appeal suffered.

The objection raised by the respondents on the score of limitation, the adjournment sought by the appellant to file an application under s. 5 of the Limitation Act for condonation of delay and the refusal of the Division Bench to condone the delay are all misplaced, proceeding as they did on an erroneous assumption that the appeal was barred by time on the date on which it was filed and that the requirement of rule 3 of Chapter 2-C is mandatory in character. We cannot stay our hands on the ground that this Court does not normally interfere with discretionary orders, when the High Court used its discretion on an altogether fallacious supposition that it had to consider the question of condonation of delay in the context of an application filed under s. 5 of the Limitation Act.

Section 5 of the Limitation Act is a hard task-matter and judicial interpretation has encased it within a narrow compass. A large measure of case-law has grown around s. 5, its highlights being that one ought not easily to take away a right which has accrued to a party by lapse of time and that therefore a litigant who is not vigilant about his rights must explain every day's delay. These and similar

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considerations which influence the decision of S. 5 applications are out of place in cases where the appeal itself is preferred within the period of limitation but there is an irregularity in presenting it. Thus, in the instant case, there was no occasion to invoke the provisions of s. 5, Limitation Act, or of rule 4, Chapter 1, of the High Court Rules. If the Division Bench were, aware that rule 3 of Chapter 2-C is directory, it would have treated the appeal as having been filed within the period of limitation, rendering it inapposite to consider whether the delay caused in filing the appeal could be condoned.

We hold accordingly that the High Court is wrong in its view that the appeal was barred by time. The memorandum was presented within the prescribed period of limitation of 30 days and there is no reason why, the irregularity committed in not filing three sets of documents along with the memorandum should not be excused when one complete set was filled with the memorandum and the remaining two sets were filed within a reasonable time thereafter.

It is not necessary to send back this matter to the High Court, since the parties have arrived at a settlement. The appellant agrees that the sum of Rs. 25,734/- which is kept in a fixed deposit account in the names of respondent 4 (Dayal Singh), respondent 5 (Harbhajan Singh) and respondent 6 (Harbans Singh) in the Punjab National Bank, Amritsar, may be, withdrawn unconditionally by these respondents, together with the interest which may have accrued on the aforesaid amount. Mr. Sikri, on behalf of the three respondents, gives up all the rights and contentions in the matter and agrees that his clients shall have no right to participate or share in any further or higher amount which may be granted by way of compensation for the acquired land. The appellant, on his part, agrees that he will not be entitled to recover from respondents 4, 5 and 6 any amount by way of arrears of rent. Since respondents 4, 5, and 6 have given up their contentions in the suit, their rights shall stand transferred to the appellant.

The appeal shall stand disposed of accordingly. There will be no order as to costs.

F.H.P.

Appeal allowed.

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JUDIS