

PETITIONER:  
STATE OF RAJASTHAN & ORS.

Vs.

RESPONDENT:  
RAJ SINGH & ANR. ETC.

DATE OF JUDGMENT: 08/07/1996

BENCH:  
RAMASWAMY, K.  
BENCH:  
RAMASWAMY, K.  
G.B. PATTANAIK (J)

CITATION:  
JT 1996 (7) 194 1996 SCALE (5)688

ACT:

HEADNOTE:

JUDGMENT:

WITH

CIVIL APPEAL NO 9522 OF 1996  
(Arising out of SLP (C) No.3626 of 1996)  
O R D E R

IN C.A.9522/96  
( @ SLP (C) No.3626/96)  
leave granted.

We have heard learned counsel on both sides.

This appeal by special leave arises from the order of the learned single Judge of the High Court of Rajasthan at Jaipur made on December 15, 1995 in Miscellaneous (Def) No.631 of 1993. It is enough to narrate the salient facts for the purpose of disposal of this case.

Notification under Section 4 of the Rajasthan Land Acquisition Act, 1953 was published on January 18, 1982 acquiring a total extent of 2570 bighas 15 biswas of land in village Desh, Tehsil Sanganer, Jaipur for public purpose. On reference, the land Acquisition Court determined the compensation by its award and decree dated July 28, 1992. An application for supply of certified copies of judgment and decree was filed and on supply of a copy of the judgment the appeal had been filed with a delay of 147 days. When the matter had come up before the court, it was pointed out by the court by order dated October 6, 1993 that the decree had not been filed along with the memorandum of appeal and the court, therefore, directed the appellant to produce the decree within three weeks from that date. It would appear and an affidavit was filed in the High Court that in spite of the appellant filing an application for furnishing certified copy of the decree, the civil court had not drawn up the decree. The matter came up again for orders on January 11, 1995 and the learned Advocate General had pointed out the omission on the part of the civil Court to draw up the decree, in spite of their having applied for supply of the certified copy of the decree. Thereon, by order dated January 31, 1995 the High Court directed the

civil court to prepare the decree within four weeks from that date and to supply the same. Accordingly, decree was prepared by the civil Court on January 31, 1995 and the same came to be filed on supply in the High Court as directed by order dated January 11, 1995. When the matter had come up before another learned Judge, by the impugned order he had recalled the orders of the court dated October 6, 1993 and January 11, 1995 and dismissed the application for condonation of delay. Thus these appeals by special leave.

It is contended by Shri Aruneshwar Gupta, learned counsel for the State, that there is no delay in the eye of law since the appeals were already filed before the limitation began to run. The decree was prepared by the court on January 31, 1995 by which date the memorandum of appeal was already filed and that the limitation had to run from the date when the decree was supplied. We find force in the contention. Shri Jain, learned senior counsel for the respondents, contended that by operation of Section 26(2) of the Land Acquisition Act, 1894 (1 of 1894) (for short, the Act'), the award is a decree and there is no need to obtain any separate decree as such and that, therefore, when the appeal was filed with a delay of 147 days, it was the duty of the appellant to satisfactorily explain every day's delay, in this case, there is no such explanation and that, therefore, the High Court was right in recalling the orders and holding that the appellant had not explained the delay. We find no force in the contention.

Section 53 of the Act provides that:

"Save in so far as they may be inconsistent with anything contained in this Act, the provisions of the Code of Civil procedure 1908 shall apply to all proceedings before the Court under this Act."

Order 41, Rule 1 CPC provides 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 this behalf. The memorandum shall be accompanied by copy of the decree appealed from and unless the Appellate Court dispenses therewith of the judgment on which it is founded."

Section 2(2) of CPC defines 'decree' to mean "the formal expression of an adjudication which, so far as regards the Court expressing it, conclusively determines the rights of the parties with regard to all or any of the matters in controversy in the suit and may be either preliminary or final. It shall be deemed to include the rejection of a plaint and the determination of any question within Section 144, but shall not include... "

Section 54 of the Act gives right of appeal against the award passed by the civil Court under Section 26 of the Act.

Section 26(2) of the Act prescribes that:

"Every such award shall be deemed to be a decree and the statement of the grounds of every such award a judgment within the meaning of Section 2, clause (2) and Section 2, clause (9) respectively, of the Code of Civil Procedure, 1908."

It would thus be seen that an appeal filed under Section 54 of the Act shall be accompanied by a memorandum of grounds together with the judgment and decree as envisaged under Order 41 Rule 1, CPC unless the copy of the judgment is dispensed with. Thus, filing of a decree along with the appeal filed under Section 54 of the Act is a pre-condition for taking further steps in an appeal filed under Order 41, Rule 1, CPC. It is true that by fiction of law the award of the civil Court made under Section 26(1) shall be deemed to be a decree. The statement of the grounds in the said award shall be a judgment But there is no inconsistency in the provisions of the Act and Order 41 and the provision of the Act as regards the appeal filed under Section 54. It would thus be clear that a formal decree in terms of Section 2, clause (2), CPC as mandated by Order 41, Rule 1, shall be drawn by the civil Court. When it supplies a memorandum of the award which is a judgment for filing an appeal under Section 54 of the Act, a copy of the decree duly certified is required to be supplied and filed with memorandum of grounds of appeal. Admittedly, the civil court had not supplied the decree drawn as required under Order 2, Rule 2. The limitation begins to run from the date of the supply of the certified copies of the judgment and decree. The time taken by the court for their supply from the date of application till the date of supply should be excluded in computation of the period of limitation. Even if application for certified copies of judgment and decree were separately filed, the combined period would be excluded. Therefore, the right to file an appeal arises only from the date when the decree was supplied. It is seen that the High Court had passed a judicial order on January 11, 1995 directing the trial Court to prepare the decree and supply the same within four weeks. Earlier, it was not supplied though the appellant had applied for. Accordingly, the decree was prepared on January 31, 1995 and the same was filed as soon as it was supplied. It would thus be clear that no delay was brooked in filing the appeal since the appeal must be deemed to have been filed after the supply of the decree by the trial Court. The learned single Judge had no power to recall the orders passed by the High Court on October 6, 1993 and January 11, 1995 except in accordance with due procedure. Dismissal of the petition in the impugned order is obviously illegal. The learned single Judge was oblivious to and has not addressed himself to the correct legal position in proper perspective.

The appeal is allowed. The impugned order of the High Court stands set aside. Accordingly, the matter is remitted to the High Court. The High Court would dispose of the appeal on merits according to law.

IN C.A. 9783 /95

(@ SLP (C) No.5670/95)

Leave granted.

Following the decision rendered in the appeal above, this appeal is disposed of and the matter is remitted to the High Court. The High Court would dispose of this appeal on merits according to law. No costs.