



Citation : CDJ 2013 MHC 6047

Court : High Court of Judicature at Madras

Case No : Civil Miscellaneous Second Appeal (SR) No. 10267 of 2013

Judges : THE HONOURABLE MR. JUSTICE G.M. AKBAR ALI

Parties : Petitioner Versus Respondent

Appearing Advocates : For the Petitioner: ----- For the Respondent: -----

Date of Judgment : 05-07-2013

Head Note :

Limitation Act - Section 12(2) & Section 12(3) -

Case Referred:

[Francis Vs Deputy Registrar - CDJ 1998 Ker HC 404](#)

Judgment :

1. Appeal filed against the judgment and decree dated 24.7.2012 made in HMCMA No.9 of 2009 on the file of Principal District Court, Viruthunagar District at Srivilliputhur confirming the order passed in HMOP No.91 of 2004 on the file of the learned Subordinate Judge, Sivakasi dated 26.10.2007.
2. The appellant herein had filed a petition for divorce under Sec.13(1) and (i-a) of Hindu Marriages Act before the learned Subordinate Judge, Sivakasi. After contest, the petition was dismissed with costs.
3. He preferred an appeal before the District Court, Virudhunagar at Srivilliputhur in CMA No.9 of 2009. The said appeal was dismissed, confirming the order of the trial court. The order was passed on 24.7.2012. A copy application was filed on 6.8.2012. The stamps were called for on 27.11.2012 and the same was deposited on 28.11.2012 and the copy was made ready on 24.12.2012. He has presented the appeal on 4.3.2013, within 90 days from the date of receipt of the decreetal order.
4. When the appeal was presented, the Registry has returned the same stating that how the appeal is in time. The Registry has calculated taking into consideration to the fact that the application was made on 23.11.2012. This date came to the knowledge of the Registry because of the endorsement made by the Superintendent of copies at the Principal District Court, Srivilliputhur, which is as follows:

PRL.DISTRICT AND SESSIONS COURT, VIRUDHUNAGAR AT SRIVILLIPUTHUR

Application made on 6.8.2012 ... 23.11.2012

Stamps called for on 27.11.2012

Stamps deposited on 28.11.2012

Copy made ready on 24.12.2012

Copy delivered on

5. Mr.N. Mariappan, learned counsel for the appellant submitted that the registry has calculated the days from 23.11.2012, as if there is a delay to apply for a copy, which is not correct. The learned counsel pointed out that copy application was made on 6.8.2012 without any delay and since it was returned for some defect, it was represented on 23.11.2012 and the same was also accepted by the District Judge and therefore, the date to be considered is only the date on which, the application was first made i.e., on 6.8.2012.

6. Heard. The interesting question arises for consideration is as follows:

When two dates are endorsed in the C.A. as date of application, for the purpose of appeal/revision which date shall be reckoned?

7. It will be appropriate to consider the relevant provisions before answering the question.

Chapater VII of the Civil Rules of Practice deals with Copies and Copyist Establishment. The relevant provisions are Rule 128, 129, 133. As per Rule 128, the application for obtaining a copy shall be in Form 51. There are four Notes appended to Rule 128 which form part of the Rule. The relevant Note is, Note II.

Rule 128 Note II reads as follows:

“Note II- Defective applications – (a) Application not complying with requirements of the rule are not to be received until amended in respect of the matters in which they are defective.

(b) All other applications shall be received and at once entered in Register-A (Civil Register No.26). Applications found defective after being entered in Register-A shall be returned.

8. The next relevant provision is Rule 129. Under Rule 129(1) the list indicating number of stamp papers required shall be affixed to the court's notice board. Such list shall remain for three working days. If the required stamp papers have not been deposited by 3 p.m. on the next (fourth) working day, the application shall be struck off.

Rule 129 (2) reads: “Any application for copies struck off under the above rule, may be restored by the court on a petition supported by an affidavit preferred for that purpose. The petitioner may deposit the required copy of stamps along with the petition for restoration of the application for copies. Every certified copy furnished after such restoration of the application for copies shall bear an endorsement showing in addition to the details specified in Rule 133, the following namely: -

1. the date on which the application was struck off;
2. the date on which petition was filed to restore the application; and
3. the date on which the application restored to file.

Note – (1) It is open to the applicant to furnish the necessary stamp papers as soon as their probable

number is known. The three working days are allowed to give him reasonable time but all delay must count against him.

9. Rule 133 provides for the endorsement showing the list of dates that are normally seen in a copy issued.

10. Reading the above provisions closely it is seen two situations arises when the Copyist section may have to handle the same copy application:

(a) When once it is returned as defective after entering it in A- register; and

(b) when it is struck off and restored.

11. However, if the form of A-register is perused it provides in column (6) and (7) 'date of return' and 'date of representation of the copy application'. There is no column as such for noting down striking off an application and its subsequent restoration. However, both a returned and restored application as the case may be is received under the original C.A.No:

12. What is now critical is Note (1) appended to Rule 129.To reproduce it again:

“It is open to the applicant to furnish the necessary stamp papers as soon as their probable number is known. The three working days are allowed to give him reasonable time but all delay must count against him.”

This provision indicates that even though three days time is granted for furnishing the stamp paper, still all delay must count against him.

13. In Muthulakshmi Vs Swaminathan & another [(1981) II MLJ 194] H is Lordship V . Ratnam J , has held that the three days time stipulated in Rule 129 for a litigant to furnish stamps should be deemed to be 'time requisite ' within the meaning of Sec.12(2) and 12(3) of the Limitation Act and that inasmuch as the Rules of Practice itself has provided three days time, it cannot in any manner, be attributed to the default or negligence or laches on the part of the appellant so as to disentitle him from claiming the benefit of exclusion of the entirety of those three days. This view was later followed by H is Lordship S rinivasan J in K aruppana Gounder Vs M arakkal & Others [1992-2-LW 354]. The authority in Francis Vs Deputy Registrar [2001(1)KLT 194 (FB) : Manu/KE/0033/2011 : CDJ 1998 KerHC 404] refers to (1981) II MLJ 194 and other authorities to arrive at the same conclusion.

14. All these cases deal with situations where the question was whether the three days time stipulated in Note (1) to Rule 129 shall be excluded within the meaning of Sec.12 of the Limitation Act. These situations obviously relate to one who is diligent in pursuing his copy application. What about the case of

(i) a litigant whose copy application is struck off and restored for not supplying requisite stamps within the three days provided.

(ii) A litigant whose copy application itself is returned for being defective and returned after curing defective.

15. In both the cases however, the applications are received on the same C.A.No. Once they are represented after curing the defect or after due restoration, as the case may be, Can they be equated with one who is diligent?

Note (1) to Rule 129 reads,

“It is open to the applicant to furnish the necessary stamp papers as soon as their probable number is known. The three working days are allowed to give him reasonable time but all delay must count against him.”

How to construe “..but all delay must count against him” ? If there is delay, then it cannot be the three days provided in the Rules and hence cannot fall within it, for as per the above authorities the entire three days have to be excluded within Sec.12 of the Limitation Act. If it falls outside the said three days only then it can be said that there is delay. If there is delay, then automatically the application may have to be struck off. But again this situation arises only when it is struck off.

If a copy application is represented and still received in the same C.A. No.,

(a) Will it not amount to delay that will count against the litigant?

(b) Whether sanction given by the presiding Judge concerned for restoring the application or receiving the application after condoning delay is adequate?

(c) What is the effect of such order of the Judge in restoring or receiving after condoning delay as the case may be?

16. In my considered view, when the copy application is initially returned for some defects and subsequently represented even after three days, and once the same is received and entered in the A register as represented, it has the same effect of condonation of delay by the Presiding Officer. Once the delay is condoned, the earliest date, on which the copy application was made, is to be reckoned for calculating the days in preferring the appeal.

17. To appreciate this, Rule 128 Note II is reproduced again which reads as follows:

“Note II- Defective applications – (a) Application not complying with requirements of the rule are not to be received until amended in respect of the matters in which they are defective.

(b) All other applications shall be received and at once entered in Register-A (Civil Register No.26). Applications found defective after being entered in Register-A shall be returned.

18. Therefore, there is a provision for return of defective application and such return will be only after entry in the register. After such amendment, the application can be represented. Time is not stipulated as in Rule 129.

19. This court is also alive to a situation where there may be inaction on the part of a party in representing the copy application within reasonable time and they may also take any number of days to represent the copy application. However, such inordinate delay has to be properly explained and the Presiding Officer can condone the delay if explanation is satisfactory.

20. In any event, the endorsement, showing the list of dates that are normally seen in a copy issued, shows two dates, then the earliest date has to be reckoned for calculating the days in preferring the appeal.

21. Therefore, the petitioner is directed to represent the appeal and on such representation, the Registry is directed to number the appeal, if otherwise in order.

22. The Registry is also directed to circulate this order to the Appeal Examiner Section of both

Principal Seat as well as Madurai Bench and also to all the District Courts after obtaining necessary order from The Hon'ble The Acting Chief Justice.

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