

Amar Nath, etc. v. Mul Raj, etc. (Verma, J.)

the Act. This form expressly deals with advance tax and no other tax and, therefore, provides the the strongest clue to the interpretation of section 221 of the Act, that is, it applies to all assessees in default or deemed to be in default and that the penalty imposed under section 221 is in addition to the arrears and the interest payable by them under sub-section (2) of section 221 of the Act.

(5) For the reasons given above, our answer to the question referred to us for opinion is in the affirmative, that is, in favour of the Revenue and against the assessee. Since there is no appearance on behalf of the assessee, we make no order as to costs.

B. S. G.

FULL BENCH

Before R. S. Narula, C.J., Prem Chand Jain and Muni Lal Verma, JJ.

AMAR NATH, ETC.,—Appellants.

*versus*

MUL RAJ, ETC.,—Respondents.

Letters Patent Appeal No. 397 of 1971.

January 27, 1975.

*Limitation Act (XXXVI of 1963)—Section 5—Expression “sufficient cause”—Meaning of—Punjab High Court Rules and Orders, Volume V, rule 3 of Chapter 2-C—Practice of the High Court in receiving and admitting Letters Patent Appeals against the requirement of rule 3—Whether a “sufficient cause” for extension of prescribed period of limitation.*

*Held*, that the expression “sufficient cause” in section 5 of the Limitation Act, 1963 is not defined in the Act. It means a cause which is beyond the control of the party invoking the aid of section 5 of the Act. The test, whether or not a cause is sufficient, is to see whether it is a *bona fide* cause. Nothing shall be taken to be done *bona fide* or in good faith which is not done with due care and attention. Subject to this test, the expression “sufficient cause” should receive liberal **construction so as to advance** substantial justice. When no negligence nor in action nor want of *bona fider* is imputable to a party for the delay in filing an appeal, it would constitute sufficient cause.

*Held, that Explanation to section 5 of the Act renders a practice of the High Court, which misleads an appellant or an applicant in ascertaining or computing the period of limitation as sufficient cause under section 5 for extending the prescribed period of limitation. Hence a wrong practice in the High Court in entertaining appeals contrary to rule 3 of Chapter 2-C of Volume V of the Punjab High Court Rules and Orders without being accompanied by three sets of spare paper-books and allowing time to file the same beyond the expiry of the period of limitation constitutes "sufficient cause" for granting extension of the time prescribed for appeal.*

*Case referred by a Division Bench consisting of Hon'ble the Chief Justice Mr. R. S. Narula and Hon'ble Mr. Justice Muni Lal Verma,—vide order dated 22nd January, 1975, to a Full Bench for decision of an important question of law. The Full Bench consisting of Hon'ble the Chief Justice Mr. R. S. Narula, The Hon'ble Mr. Justice Prem Chand Jain, and Hon'ble Mr. Justice Muni Lal Verma after deciding the question of law referred the case back to the Division Bench for disposal of the case,—vide order dated 27th January, 1975 and the Division Bench consisting of Hon'ble the Chief Justice Mr. R. S. Narula, and Hon'ble Mr. Justice Muni Lal Verma finally decided the case on 28th February, 1975.*

*Letters Patent Appeal under Clause X of the Letters Patent against the judgment of Hon'ble Mr. Justice Bhopinder Singh Dhillon, passed in E.F.A. No. 263 of 1967, dated 4th May, 1971, modifying that of Shri Jagdish Chand Aggarwal, Subordinate Judge, 1st Class, Jagraon, dated the 6th May, 1967, dismissing the execution petition of the decree holders as barred by time and leaving the parties to bear their own costs to the extent that the execution application cannot be said to be barred by time as regards the claim of the money decree only and accepting the appeal so far as it relates to the money part of it with costs.*

C. M. No. 1134 of 1972.—

*Application under section 5 of the Limitation Act praying that the abatement be set aside.*

C. M. No. 9152 of 1974.—

*Application under section 5 of the Limitation Act praying that the delay in filing 3 complete sets be condoned.*

C. M. No. 1135/1972.

*Application under Order 22 Rule 3 C.P.C. praying that legal heirs of Shri Mul Raj, i.e., 1. Smt. Leela Wati (widow), w/o Mool Raj, 2. Prem Nath (son), 3. Surinder Kumar (son), 4. Kanta*

Amar Nath, etc. v. Mul Raj, etc. (Verma, J.)

*Kumari (daughter), w/o Shri Pawan Kumar of M/s. Pawan Kumar Sham Lal, Cloth Mch. Chaura Bazar, Ludhiana, 5. Prem Lata, w/o Shri Prithi Chand (daughter), c/o M/s. Ram Murti Prithi Chand Aggarwal, General Merchant, Khanna Mandi, District Ludhiana, 6. Tripta Devi (daughter), 7. Banoo Devi (daughter), 7. Ranoo Devi (daughter), 8. Shashi Devi (daughter), 9. Kanchan Devi (daughter), and 10. Madhu Bala (daughter), No. 2, 3, 4, 5, 6, 7 are majors, No. 8, 9, 10 are minors through Leela Wati,—vide order dated 14th March, 1972, in C.M. 1136 of 1972, passed by a Division Bench of this Court. Nos. 1, 2, 3 and 6 to 10 residents of Jagraon, District Ludhiana, be brought on record.*

Ram Lal Aggarwal, and Amar Dutt, Advocates, for the appellants.

H. L. Sarin, Senior Advocate, M. L. Sarin, Advocate, with him. for the respondents.

#### REFERRING ORDER

The referring order was delivered by :—

R. S. NARULA, C.J.—The normal period of limitation for filing both these appeals (L.P.As. 397 and 557 of 1971) expired during the summer vacation of 1971. Each of the two appeals was, however, filed on July 12, 1971, that is the day on which the Court reopened after the expiry of the summer vacation. If the appeals had been proper, these would have been within time under section 4 of the Limitation Act. It, however, appears that the appeals were filed without being accompanied by three sets of spare copies of the appeals and their accompanying documents as required by rule 2 of Chapter 2-C of Volume V of the Rules and Orders of this Court. An objection is taken by the respective respondents in each of the two appeals that since rule 3 of Chapter 2-C states that no appeal under clause X of the Letters Patent would be received by the Deputy Registrar unless it is accompanied by three typed copies of the documents mentioned in the rule, these appeals should be dismissed as barred by time. Reliance is placed for this objection on the Full Bench judgment of this Court in *Mahant Bikram Dass Chela Mahant Lachhman Dass Mahant, Amritsar v. The Financial Commissioner, Revenue, Punjab, Chandigarh and others* (1). Mr. Ram Lal Aggarwal, learned counsel for the appellants in Amar Nath's case

(1) 1974 P.L.R. 451.

(L.P.A. 397 of 1971), submits that his clients' application under section 5 of the Limitation Act (C.M. 9152 of 1972) should be allowed as the non-filing of the three sets of copies required by rules 2 and 3 *ibid* was due to a wrong practice which had grown in this Court, and in fact there was conflict of judicial opinion on the manner of interpretation of the rules so as to hold a particular rule to be mandatory or directory. He has cited a large number of judgments in support of the propositions pressed by him.

(2) The question of consideration and decision of such applications under section 5 of the Limitation Act consequent on the judgment of the Full Bench in the case of *Mahant Bikram Dass Chela Mahant Lachhman Dass Mahant, Amritsar* (supra) in arising daily in this Court in a very large number of cases. In these circumstances it appears to us to be necessary to refer the following question to the Full Bench :—

“Whether the mere fact that according to the particular practice prevailing in the High Court before decision of the Full Bench in the case of *Mahant Bikram Dass Chela Mahant Lachhman Dass Mahant, Amritsar* (supra) Letters Patent Appeals were entertained by the office contrary to the requirements of rule 3 of Chapter 2-C of Volume V of the Rules and Orders of the High Court without being accompanied by three sets of spare paper-books, and time was allowed to file the same, and on filing the copies even beyond the expiry of the period of limitation the appeals were entertained and admitted, does or does not in law constitute sufficient cause for condonation of delay in filing the Letters Patent Appeals which were filed before the judgment of the Full Bench.”

(3) The papers of this case may be put up before the Chief Justice today for constituting a Full Bench to hear and decide the above question. This case will now be laid before the Full Bench on January 27, 1975.

#### ORDER

VERMA, J.—The question which has been referred by the Division Bench to us for decision, reads thus :—

“Whether the mere fact that according to the particular practice prevailing in the High Court before the decision of the Full Bench in the case of *Mahant Bikram Dass*

Amar Nath, etc. v. Mul Raj, etc. (Verma, J.)

*Chela Mahant Lachhman Dass Mahant*, Amritsar (1), (supra) Letters Patent Appeals were entertained by the office contrary to the requirements of rule 3 of Chapter 2-C of Volume V of the Rules and Orders of the High Court without being accompanied by three sets of spare paper-books, and time was allowed to file the same, and on filing the copies even beyond the expiry of the period of limitation the appeals were entertained and admitted, does or does not in law constitute sufficient cause for condonation of delay in filing the Letters Patent Appeals which were filed before the judgment of the Full Bench.”

(5) The circumstances which necessitated the making of this reference are stated in the order of reference and need not be recapitulated. The expression ‘sufficient cause’ is not defined in the Limitation Act (No. 36 of 1963), hereinafter called the Act. It, in my opinion, means a cause which is beyond the control of the party invoking the aid of section 5 of the Act. The test, whether or not a cause is sufficient, is to see whether it is a *bona fide* cause, inasmuch as nothing shall be taken to be done *bona fide* or in good faith which is not done with due care and attention. Subject to the above test, the words “sufficient cause” should receive liberal construction so as to advance substantial justice. When no negligence nor inaction nor want of *bona fides* is imputable to a party for the delay in filing an appeal, it would constitute sufficient cause. Relying on several judgments and Explanation to section 5 of the Act, Shri Ram Lal Aggarwal, learned counsel for Amar Nath and others, who are appellants in L.P.A. 397 of 1971, contended that the wrong practice prevailing in this Court in receiving and admitting the Letters Patent Appeals, which were not in accordance with the requirements of rule 3 of Chapter 2-C of Volume V of the Rules and Orders of the High Court (that is, when the memorandum of appeals were not accompanied by three sets of spare paper-books) had misled the counsel in filing the aforesaid Letters Patent Appeal without the said spare copies. He added that the said mistake was honest and could not be attributed to any negligence or want of good faith of the counsel who filed the appeal, much less of the appellants, and, as such, the same should be considered as ‘sufficient cause’. I find merit in his contention. Explanation to section 5 of the Act, which runs as under :—

“The fact that the appellant or the applicant was misled by any order practice or judgment of the High Court, in

ascertaining or computing the prescribed period may be sufficient cause within the meaning of this section."

renders a practice of the High Court, which misleads an appellant or an applicant in ascertaining or computing the period of limitation, as sufficient cause under section 5 for extending the prescribed period of limitation. Having regard to the said Explanation, it would be justified and reasonable to infer that wrong practice of this Court in receiving and admitting the Letters Patent Appeals without the same being accompanied by three sets of spare paper-books, tantamounts to 'sufficient cause' as contemplated by section 5 of the Act for granting extension in the time prescribed for an appeal. The judgments reported as *Sukh Dial v. Jey Singh* (2), *Nibaran Chandra Dutt, v. Martin and Co. and another* (3), *Jyotindranath Sarkar and others v. Lodna Colliery Co. Ltd.* (4), *P. K. Bhimasena Rao v. I. C. Venugopal Mudali and others* (5), *Governor-General in Council v. Jesraj Tilakchand Labhchand and others* (6), *Nagindas Motilal v. Nilaji Moroba Naik* (7), and *Kedar Lal and another v. Hari Lall* (8), support the view that a wrong practice of the High Court, which misleads an appellant or his counsel in not filing the appeal complete in all respects (without three sets of spare paper-books in the case in hand) should be regarded as "sufficient cause" under section 5 of the Act for enlarging the time prescribed for the appeal. No decision contrary to the aforesaid view, expressed in the judgments referred to above, was referred to us.

(6) It, thus, follows from the above that the practice prevailing in this Court before the decision of the Full Bench in *Mahant Bikram Dass Chela Mahant Lachhman Dass Mahant, Amritsar v. The Financial Commissioner, Revenue, Punjab, Chandigarh, and others* (1), in entertaining and even admitting the Letters Patent Appeals without being accompanied by three sets of spare paper-books when the same were filed, and refiling the same with the said three sets of

- (2) 101 P.R. 189.
- (3) A.I.R. 1920 Cal. 304.
- (4) A.I.R. 1921 Patna 175.
- (5) A.I.R. 1925 Mad. 725.
- (6) A.I.R. 1950 Assam 83.
- (7) A.I.R. 1924 Bom. 399.
- (8) A.I.R. 1952 Cal. 176.

Uttam Singh v. Kirpal Singh, M.L.A., etc. (Tuli, J.)

spare paper-books and complete in all respects beyond the expiry of the prescribed period of limitation, constitutes "sufficient cause" for granting extension of the time prescribed for appeal, and I would record the answer to the question, referred to us, in the affirmative. The application would now go back to the Division Bench for final disposal. In the circumstances of the case, there would be no order as to costs.

R. S. NARULA, C.J.—I agree entirely.

P. C. JAIN, J.—I also agree.

K.S.K.

FULL BENCH

Before Bal Raj Tuli, A. D. Koshal, Prem Chand Jain,  
Man Mohan Singh Gujral and Bhopinder Singh  
Dhillon, JJ.

UTTAM SINGH,—*Petitioner.*

*versus*

KIRPAL SINGH, M.L.A., ETC.,—*Respondents.*

Election Petition No. 27 of 1972.

March 3, 1975.

*Constitution of India (1950)—Article 191(1)(e)—Life Insurance Corporation Act (XXXI of 1956)—Section 49(2)(b) and (bb)—Life Insurance Corporation of India (Staff) Regulations (1960)—Regulation 25(4), debarring an employee of the Corporation from taking part in any election—Whether amounts to a disqualification for being a member of the Legislative Assembly of a State within the meaning of Article 191(1)(e) of the Constitution.*

*Held*, that under section 49 of the Life Insurance Corporation Act, 1956, regulations, to be framed by the Corporation, are to provide for such matters for which provision is expedient to be made for the purpose of giving effect to the Act. There is no provision in the Act which necessitates the framing of a regulation for placing any restriction on the employees of the Corporation debarring from being chosen or for being a member of the State Legislature or Parliament. The object of the Regulations is to define the terms and conditions of service of the staff of the Corporation. Any breach of that regulation can be punished by inflicting any of the penalties