

jurisdiction to exercise its power under section 10(2) even after the lapsing of the list.

(9) Admittedly, however, no such situation as visualised by the learned Advocate-General arises here. In the present case, what particularly deserves notice is that the list had lapsed on the 31st of March, 1963, and even the initiation of the proceedings for the amendment and variation in the list were begun as late as eight months after the date of expiration of the list. As noticed earlier, the show cause notice for enhancement was given in November, 1963. It is thus patent that both the initiation of the proceedings, and the passing of the final orders was done long after the expiry of the list. In this context we are clearly of the view that the assessing authority travelled beyond its jurisdiction in *suo motu* exercising its power to enhance the valuation of the appellant's property after a period of nearly six years of its original assessment.

(10) This appeal, therefore, must succeed and is allowed but we would make no order as to costs.

N. K. S.

CIVIL MISCELLANEOUS

Before Mehar Singh, C.J. and R. S. Narula, J.

BUTA SINGH,—Appellant.

Versus.

CHAND *alis* CHANDA SINGH,—Respondent.

Civil Miscellaneous No. 1978-C of 1969

in

Regular First Appeal No. 401 of 1969

March 10, 1970.

Limitation Act (XXXVI of 1963)—Sections 5 and 14—Appeal filed beyond the period of limitation—Application for condonation of delay under section 5—Determination of—Principles behind section 14—How far applicable—Punjab High Court Rules and Orders, Volume V, Chapter 1-A—Rules 2(a) and 5—Appeal filed in the High Court without complying with the Rules—Such appeal returned by the Deputy Registrar for compliance within a specified period—Appeal not filed within that period—Whether becomes barred by time—Delay in filing the appeal—Whether can be condoned without sufficient cause for each day of the delay.

Held, that where section 14 of Limitation Act, 1963, does not directly apply but is only an aid in explaining the sufficiency of the cause for the purpose of section 5, then it is not to be applied exactly as if it applies literally to a suit, but only to the extent it goes to explain why the appeal could not be filed and thus to explain sufficiency of the cause. When an appeal is filed beyond the period of limitation and an application under section 5 for the condonation of the delay is made, the only assistance that can be derived from the principle behind section 14 is that the period spent in good faith in a wrong forum may be taken to be sufficient cause but the duration of that period cannot be calculated and excluded in computing the period of limitation for filing an appeal exactly to the same extent and in the manner as under section 14, because that section does not directly apply. (Para 4)

Held, that rule 5, Chapter 1-A of Punjab High Court Rules and Orders Volume V, authorises the Deputy Registrar of the High Court to return the memorandum of appeal for compliance within a time to be fixed by him if the memorandum does not comply with the rules. The appeal, if not refiled within the time specified by the Deputy Registrar, becomes barred by time. When an application under section 5 of Limitation Act, 1963, is made for the condonation of the delay, it becomes the duty of the appellant to explain each single day's delay otherwise the appeal has to be dismissed as barred by time. (Para 5)

Petition under Sections 5 and 14 of the Indian Limitation Act praying that the time spent by the petitioner in prosecuting his appeal in the Court of the Additional District Judge, Ludhiana, be excluded and the delay if any be condoned and the time for presenting the appeal be extended.

(Misc. Case No. 25 of 26th April, 1968, decided by Shri M. S. Lobana, Sub-Judge, 1st Class, Ludhiana, on 27th May, 1968.)

D. S. CHAHAL, ADVOCATE, for the appellant petitioner.

Y. P. GANDHI, ADVOCATE, for the respondents.

ORDER

MEHAR SINGH, C.J.—In a suit for redemption of mortgages by the plaintiff, the preliminary decree, was made by the trial Court on February 9, 1968, and the final decree on May 27, 1968. Buta Singh defendant filed two appeals, one against each decree, in the District Court. He proceeded on the basis that the valuation for purposes of jurisdiction stated by the plaintiff in the suit had been Rs. 4,350, though in defence he had claimed a much higher amount. On that basis he filed both the appeals in the District Court. The appeals

were heard by the Second Additional District Judge of Ludhiana, who, by his judgement and order of April 7, 1969, purporting to follow *Banu Mal v. Mehta Nathu Lal* (1), came to the conclusion that the appeals were not competent before him, being beyond his pecuniary jurisdiction and that the same should properly have been filed in the High Court. The appeals were actually returned by the Court of the Second Additional District Judge to the defedant on May 1, 1969, and on that vary day the same were present in this Court.

(2) The office in this Court made three objections on the appeals on May 2, 1969, the objections being (a) opening sheet is blank, (b) explanation should be given how value has been fixed and court-fee paid and (c) memo of parties is not forthcoming. The appeals were returned to the counsel for the defendant, to be re-filed within a week after compliance. The appeals were re-filed on June 9, 1969, but the office again noted that there had been no reply to the first objection, and on June 11, 1969, the appeals were again returned to the counsel, to be re-filed within a weak. The appeals were again filed on June 21, 1969, and this time the first objection was complied with.

(3) With the appeals, the defendant, in each case, made an application under sections 5 and 14 of the Limitation Act of 1961 for condonation of delay for filing the appeals, explaining that the cause of the delay had been a mistake made in filing the appeals in the District Court. When the appeals were filed in the District Court, the same were filed within the period of limitation as prescribed for filing an appeal in that Court. When the appeals were filed in this Court, the last date for filing such appeals had run out, even including the time spent by the defendant in obtaining the copies of the judgments and decrees of the trial Court. It is accepted by the learned counsel on both sides that if the period between the dates on which the appeals were filed in the District Court and the date on which the same were returned and re-filed in this Court is excluded, then without question the two appeals of the defendant in this Court had been filed within time.

(4) It is settled that section 14 of the Limitation Act of 1963 applies to suits and not to appeals. In substance, the application, with each appeal, by the defendant is one under section 5 of that

(1) A.I.R. 1960 Pb. 357.

Act, and reference to section 14 is only by way of providing sufficient cause for not having filed the appeals within limitation in this Court. The argument on the side of the defendant in the two miscellaneous applications with the appeals is that although in terms section 14 has no application to appeals, but the principles of the same have been applied in situation as obtains in these applications, and the whole of the period spent by the defendant from the date each one was filed in the District Court to the date each was returned to him, has to be excluded. In this he is supported by the decision of their Lordships of the Privy Council in *Brij Indar Singh v. Lala Kanshi Ram* (2). On the contrary, the learned counsel for the plaintiff refers to *Ramlal v. Rewa Coal fields Ltd.*, (3), and contends that their Lordships considered *Brij Indar Singh's case* (2), but did not precisely approve what was decided in that case, and rather held that where section 14 does not directly apply but is only an aid in explaining the sufficiency of the cause for the purpose of section 5, then it is not to be applied exactly as if it applies literally to a suit, but only to the extent it goes to explain why the appeal could not be filed and thus to explain sufficiency of the cause. The learned counsel refers to the observations of their Lordships, first at page 365 to this effect—"It is, however, necessary to emphasise that even after sufficient cause has been shown, a party is not entitled to the condonation of delay in question as a matter of right. The proof of a sufficient cause is a condition precedent for the exercise of the discretionary jurisdiction vested in the Court by section 5. If sufficient cause is not proved, nothing further has to be done; the application for condoning delay has to be dismissed on that ground alone. If sufficient cause is shown then the Court has to enquire whether in its discretion it should condone the delay. This aspect of the matter naturally introduces the consideration of all relevant facts and it is at this stage that diligence of the party or its *bona fides* may fall for consideration; but the scope of the enquiry while exercising the discretionary power after sufficient cause is shown would naturally be limited only to such facts as the Court may regard as relevant. It cannot justify an enquiry as to why the party was sitting idle during all the time available to it. In this connection we may point out that considerations of *bona fides* or due diligence are always material and relevant when the Court is dealing with applications made under section 14 of the Limitation Act. In dealing with such

(2) A.I.R. 1917 P.C. 156.

(3) A.I.R. 1962 S.C. 361.

applications, the Court is called upon to consider the effect of the combined provisions of sections 5 and 14. Therefore, in our opinion, considerations which have been expressly made material and relevant by the provisions of section 14 cannot to the same extent and in the same manner be invoked in dealing with applications which fall to be decided only under section 5, without reference to section 14," and then again at page 366—"The next case on which reliance has been placed by the respondent is *Brij Indar Singh v. Lala Kanshi Ram* (2). The principle point decided in that case had reference to section 14 read with section 5 of the Limitation Act, 1908, and the question which it raised was whether the time occupied by an applicant in good faith for review although made upon a mistaken view of the law, should be deemed as added to the period allowed for presenting an appeal. As we have already pointed out, when the question of limitation has to be considered in the light of the combined operation of sections 14 and 5 of the Limitation Act, the conditions expressly imposed by section 14 have to be satisfied. It would, however, be unreasonable to suggest that the said conditions must to the same extent and in the same manner be taken into account in dealing with applications falling under section 5 of the Limitation Act." Earlier, their Lordships had explained that in the case of section 5 when sufficient cause is shown, delay of each single day has to be explained. Now, it is clear from *Ramlal's case* (3) that where an application is under section 5 alone, as is the case here, the only assistance that can be derived from the principle behind section 14 is that the period spent in good faith in a wrong forum may be taken to be sufficient cause for the duration of that period for not filing the appeal, but the whole of the period cannot be calculated and excluded in computing the period of limitation for filing an appeal exactly to the same extent and in the same manner as under section 14, because that section does not directly apply. Applying this to the facts of the present case, down to May 1, 1969, the defendant has shown sufficient cause for not filing the appeals in this Court, although the same had been barred long time before by the expiry of ninety days from the date of decree of the trial Court in each case. He has yet to explain the delay between May 2 and June 21, 1969. It is this period which cannot under section 14 be given benefit of to the defendant in view of the decision of their Lordships in *Ram Lal's case* (3), though *Brij Indar Singh's case* (2), might lend support to this argument on the side of the defendant, but obviously the decision of the Supreme Court must prevail,

(5) There is then no satisfactory explanation for the delay in re-filing the appeals between May 2 and June 21, 1969. There is, however, another matter which comes in for consideration and that is this, the appeals having been filed on May 1, 1969, and it having been found as above that to that date the defendant has shown sufficient cause under section 5 of the Limitation Act of 1963 for condonation of delay, can it be said that the appeals were actually not re-filed on that day, because the objections raised in this office were not objections of substance and not according to the rules? The matter for consideration is that where an appeal is otherwise filed within time, whether it is filed actually within the period of limitation or whether it is taken to be within the period of limitation, because the delay in filing it has been condoned up to a certain date, then can it be said not to have been properly filed if objections are raised in the office of this Court which objections may not have the support of the rules? This raises the next question, whether the objections raised by the office in the appeals of the defendant have the support of the rules? Leaving out two out of the three objections, one objection at least has the support of the rules, that objection being the first objection with regard to leaving blank the opening sheet or the form of appeal with each appeal. Sub-rule (1) of rule of Order 41 of the Code of Civil Procedure provides that every appeal shall be preferred in the form of memorandum signed by the appellant or his pleader. The form of memorandum of appeal, according to this rule, is provided in Appendix 'G'—No. 1, and there is reference to the same in rule 2(a) in section (a) of Chapter 1-A of Volume V of the Rules and Orders of this Court, which says that if a printed form is prescribed for a memorandum of appeal, the appeal shall be made on that form. Rule 5 in the same section says that the Deputy Registrar may return for amendment within a time to be fixed by him any memorandum of appeal for the reason specified in Order 41, rule 3 of the Code of Civil Procedure, and rule 3 deals with rejection or amendment of a memorandum of appeal for non-compliance with the earlier two rules, which include sub-rule (1) of rule 1, of the same Order. So, according to these rules, the Deputy Registrar had the power to return the memorandum of appeal, in the case of each appeal of the defendant, in not filing the appeal, with the form of memorandum of appeal duly and properly filled, and filing it blank. Certain information, which obviously is otherwise essential is provided for in the printed form for memorandum of appeal, and as the form was left blank the information

was not available. So, this is not a case in which the appeals were returned to the defendant on May 2, 1969, not in accordance with the rules, the fact of the matter being that the return was very much in accordance with the rules. Now the endorsements on the appeals show that the objections were first raised on May 2, 1969, and re-filing was directed within a week, but it was not done until June 9, 1969, when the essential objection with regard to filling the form of memorandum of appeal had not been complied with. So they were returned again on June 11, and it was not until June 21, 1969, that this part of the objections was complied with. To the period between May 2 and June 21, 1969 by no manner of looking at it can section 14 of the Limitation Act be applied, and for this period no sufficient cause for not filing the appeals has been shown. The records of the appeals only show that on June 21, 1969, the counsel for the defendant noted that the defendant could not be contacted earlier, which could hardly be described as any cause at all. So, it was the duty of the defendant in each appeal in his application under section 5 of the Limitation Act of 1961 to explain each single day's delay, and while he has rendered explanation, with sufficient cause, down to May 1, 1969, but he has failed to do so for the period between May 2 and June 21, 1969, his appeals, as already said; having been barred by time long before that date.

(6) In the approach as above Civil Miscellaneous application No. 1976-C of 1969 in Regular First Appeal No. 401 of 1969 and Civil Miscellaneous Application No. 1977-C of 1969 in Regular First Appeal No. 402 of 1969 by the defendant are dismissed, but, in the circumstances of this case, there is no order in regard to costs.

(7) The appeals be now listed for hearing before this Bench next week.

R. S. NARULA, J.—I agree.

N.K.S.

LETTERS PATENT APPEAL

Before Mehar Singh, C.J. and R. S. Narula, J.

MOHAN LAL AND ANOTHER,—Petitioners.

versus

BHAGWATI PARSHAD AND OTHERS,—Respondents.

Letters Patent Appeal No. 84 of 1969

March 11, 1970.

Punjab Municipal Election Rules (1952)—Rules 11(2), 40(b) and 63(1)(c)—Election to a double-member municipal constituency—Candidate