## PRIVY COUNCIL.

P. C.*
1922

*May* 22.

PRAMATHA NATH ROY (PLAINTIFF)

*v.*

LEE (DEFENDANT).

[ON APPEAL FROM THE HIGH COURT AT CALCUTTA.]

*Procedure—Limitation—Time to appeal—Practice of High Court at Calcutta—Exclusion of time requisite to obtain copy of decree—Religion—Limitation Act (IX of 1908), s. 12, sub-s. (2.)*

By r. 3 of ch. 32 of the Rules of the High Court at Calcutta (1914) every memorandum of appeal must be accompanied by a copy of the decree or order appealed from. Section 12, sub-s. (*2*) of the Indian Limitation Act, 1908, provides that in computing the time for appeal there shall be excluded the time "requisite" for obtaining the copy :—

*Held*, that time which need not have elapsed if the appellant had taken reasonable and proper steps to obtain a copy of the decree or order could not be regarded as "requisite" time within sub-s. (*2*).

*Bani Madhub Mitter* v. *Matungini Dassi*, explained.

APPEAL (No. 131 of 1920) from a judgment and decree (January 29, 1919) of the High Court in its appellate jurisdiction affirming an order made by Greaves J. (July 26, 1918).

The respondent sued the appellant in the High Court at Calcutta to recover a sum of Rs. 27,443, and on February 14, 1918, obtained ex parte a decree for that sum, the appellant's defence having been struck out for default in complying with an order to give inspection of documents. On March 23, 1918, on the application of the appellant, it was ordered that on

* *Present* : LORD BUCKMASTER, LORD ATKINSON, LORD SUMNER and LORD PARMOOR.

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his furnishing security for Rs. 27,000 to the satisfaction of the Registrar on or before April 10, 1918, and paying certain costs, the decree should be set aside and the suit restored for hearing. The time was subsequently extended, but the appellant failed to satisfy the Registrar that security which he proposed was sufficient.

On July 1, 1918, the appellant applied to the High Court for an order directing the Registrar to accept Rs. 27,000 as security from him, and directing the *ex parte* decree to be set aside. On July 26 the application was heard by Greaves J. and was dismissed.

On August 30, 1918, the appellant filed a memorandum of appeal against the order of July 26; leave being granted to him to file it without a copy of that order (as required by the Rules of the High Court), but subject to any objection.

By the Indian Limitation Act, 1908, Sch. I., Art. 151, the time for appealing from any decree or order of the High Court in its original jurisdiction is twenty days from the date of the decree or order. By s. 12, sub-s. (*2*) of that Act the time requisite for obtaining a copy of the decree or order is to be excluded in computing the time for appealing.

The respondent (plaintiff) had applied on August 6 to have the order drawn up; the draft order was served on the appellant on August 7, approved by him on August 16, signed by the Master on August 28, and filed on September 3. The appellant made no application for a copy of the order until September 9.

At the hearing of the appeal the respondent objected that it was barred by Art. 151 of the Limitation Act. The learned Judges gave effect to that objection, rejecting a contention that the appeal was in time having regard to s. 12, sub-s. (*2*). They also declined to extend the time under s. 5.

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*Dunne K. C.* and *Macaskie*, for the appellant. Having regard to s. 12, sub-s. (*2*), the appeal was not barred by Art. 151. The respondent having applied to have the order drawn up, the appellant was under no obligation to apply independently; in any event he was entitled to the benefit of the delay of one month provided by r. 27 of ch. IV of the High Court Rules. It is the settled practice of the High Court in applying s. 12, sub-s. (*2*), to have regard solely to the time when the copy of the decree or order was actually obtained. That practice was based upon the Full Bench decision in *Bani Madhub Mitter* v. *Matungini Dassi* (1) [Reference was also made to the Rules of the Calcutta High Court, ch. IV., r. 9; ch. XVI. rr. 22, 24; and ch. XXXII., r. 3.]

*E. B. Raikes*, for the respondent, was not called upon.

*May* 12.

The judgment of their Lordships was delivered by LORD BUCKMASTER. The appellant in this case is the defendant in a suit which the respondent instituted by a plaint filed on June 24, 1916. The various stages in the litigation are set out in detail in the judgment of the Chief Justice in the Appellate Court at Calcutta, and it is unnecessary that they should be repeated. Among these there was a decree made on February 14, 1918, decreeing in favour of the respondent and against the appellant the sum of Rs. 27,443. Application made by the appellant to Greaves J. to set that decree aside was refused on July 26, 1918. The appellant desired to appeal from that refusal, and he produced his memorandum of appeal before the Court on August 30 of that year, on the eve of the Court rising for the vacation.

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By r. 3 of ch. 32 of the Rules of the High Court of 1914, it is provided that every memorandum of appeal shall be accompanied by a copy of the decree or order appealed from, and with this rule the appellant did not comply. The memorandum of appeal was, however, admitted without the order, subject to all objections that might be raised on the hearing which took place on January 29, 1919. It was then decided by the High Court that the appeal was out of time, and it is from that judgment that the present appeal has been brought. That the notice of appeal was out of time, in fact, is beyond dispute, for the period of appeal is twenty days from the date of the decree or order which it is sought to impeach, and that period expired on August 15, 1918. But there is a provision contained in s. 12, sub-s. *(2)* of the Indian Limitation Act of 1908, which provides that in computing the time for appeal there shall be excluded the time requisite for obtaining a copy of the decree. The appellant's contention is that the time "requisite" within the meaning of that sub-section is the time which, in the circumstances of the case, is actually occupied in obtaining the decree, and that, so regarded, the time that ought to be deducted here is more than sufficient to rectify the delay.

The facts with regard to that matter are these: After the order had been made on July 26 no steps were immediately taken by the plaintiff to have the order drawn up, but after the lapse of four days it was competent to the defendant to apply for that purpose. The four days elapsed and nothing was done. On August 6, application was made by the plaintiff to have the order drawn up, and on August 7 the draft of the order was sent to the appellant. The order was simplicity itself, but the appellant only returned the draft on August 16. On August 28 it

was signed, and on September 3 it was filed by the plaintiff.

Now the learned Judges in the Appeal Court have held that in determining what is the requisite time referred to in s. 12, sub-s. (*2*), of the Limitation Act the conduct of the appellant must be considered, and their Lordships think that in so determining they have rightly regarded the statutory provision. In their Lordships' opinion, no period can be regarded as requisite under the Act, which need not have elapsed if the appellant had taken reasonable and proper steps to obtain a copy of the decree or order. In the present case he took none, and the periods between July 30 and August 6, and again between August 7 and August 16, which were within the appellant's control, are sufficiently great to prevent the appellant saying that the time that did elapse must have elapsed even if he had acted with reasonable promptitude.

It is then urged that there is an authority, decided in 1886, which has been the origin of a practice undeviatingly followed by the Courts in Calcutta in the interpretation of the statute, and that practice is said to be that in determining what is the time requisite which may be deducted you are, in all cases, to look at the time that has actually elapsed in obtaining the order. Their Lordships are unable to see how this decision, *Bani Madhub Mitter* v. *Matungini Dassi* (1), can have been so misunderstood. In that case judgment was pronounced on July 17, 1883, and the decree was signed on July 23, so that only six days elapsed between the pronouncing of the judgment and the signing of the decree. It would be impossible for anybody to suggest that that was an unreasonable time. Again, the application for the copy was made

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on August 3, and it was obtained on August 11; another eight days elapsed there for which the appellant need not be held responsible. All that that case decided was that those two periods of time, one of which was prompt and effective and the other of which the appellant might not have been able to control, ought to be deducted from the length of time between the decree and the lodging of the memorandum. It certainly does not support the proposition that in determining what period is to be deducted in any case the time actually consumed in obtaining the decree is to be regarded. Their Lordships have been referred to a well-known book on practice which, it is said, shows that that is the practice, notwithstanding the limited character of the judgment; but even there it is impossible to find this practice laid down in terms so plain and so unhesitating that their Lordships could rely upon that authority for the purpose of saying that it has become established as the equivalent of a Rule of Court.

Their Lordships think that the appellant here is wrong, for the reason stated, which they regard as forming the foundation of the judgment appealed from.

For these reasons their Lordships will humbly advise His Majesty that this appeal should be dismissed with costs.

A. M. T.

Solicitors for the appellant: *J. J. Edwards & Co.*
Solicitors for the respondent: *Watkins & Hunter.*