

APPEAL FROM ORIGINAL CIVIL.

Before Rankin C. J. and C. C. Ghose J.

SARAT CHANDRA KHAN

v.

UPENDRA NATH BOSE.*

1927

Jan. 31.

*Practice—Appeal—Limitation—Time requisite for obtaining copy—
Limitation Act (IX of 1908), s. 12.*

Any failure in reasonable diligence which produces unnecessary delay at one or more stages of obtaining a copy of the order will disentitle an appellant to claim the whole of the time actually occupied in obtaining the copy as "time requisite" within the meaning of section 12 of the Limitation Act.

Pramatha Nath Roy v. Lee (1) and other cases explained.

This was an application by the appellant for time to file the paper-book and settlement of the index. The appeal was against an order of Mr. Justice C. C. Ghose, made on 25th June 1926, dismissing a suit, on the Special List, for want of prosecution. On 29th June the appellant applied for certified copies of the order and the minutes and on 15th July made requisition for drawing up of the order. On 12th August the draft order was sent for approval, it was settled on 18th, signed on the 25th and filed on 1st September. Stamp for office copy was furnished on 3rd September and the copy was taken delivery of on the 14th September. The memorandum was filed on 6th November, the last day of the long vacation. The respondent took the objection that this appeal was time barred.

* Appeal from Original Civil No. 129 of 1926 in suit No. 692 of 1920.

(1) (1922) I. L. R. 49 Calc. 999.

1927

SARAT
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NATH BOSE.*Mr. S. C. Bose*, for the appellant.*Mr. B. K. Ghosh*, for the respondent.*Cur. adv. vult.*

RANKIN C. J. The first question is whether this appeal was brought out of time. The order appealed from was pronounced on the 26th June 1926 and the memorandum of appeal was filed on the 6th November 1926, the last day of the long vacation.

The law gives to an appellant twenty days excluding the time requisite for obtaining a copy of the order appealed from.

Cases which show how this rule is to be applied to the Rules and practice of this Court on the Original Side are *Nibaran v. Martin & Co.* (1), *Pramatha v. Lee* (2), *Gobind v. Official Assignee* (3), *Kamrudin v. Mitter* (4).

These decisions show (i) that a copy of the order must be applied for within twenty days of its being pronounced and (ii) that it will be of no avail to apply for such copy unless within the twenty days a requisition to draw up the order has been given either by the appellant or by some other party to the cause.

Even if these conditions are complied with the time to be excluded will not necessarily be the whole of the time which in fact elapsed between the date of the application for a copy and the date on which the copy was furnished. Under the Original Side Rules, there are certain points at which the time to be occupied by the process of obtaining a copy of the order is in the control of the appellant to some

(1) (1920) 32 C. L. J. 127.

(3) (1924) 29 C. W. N. 163.

(2) (1919) 23 C. W. N. 553 ;

(4) (1924) 1. L. R. 52 Calc. 342.

(1922) 1. L. R. 49 Calc. 999.

extent. (a) The draft of the order has to be approved or amended. (b) The fees for the copy order have to be paid in stamps. (c) The order when ready has to be taken up. Any failure in reasonable diligence which produces unnecessary delay at one or more of these stages will disentitle an appellant to claim the whole of the time actually occupied in obtaining the copy of the order. The time unnecessarily occupied is not time "requisite" within the meaning of section 12 of the Limitation Act, 1908.

There is, however, another matter as to which time is within the control of the appellant. This appears by section 27 of Ch. XVI which gives to any party a right to apply to have the order drawn up if the party in whose favour it was made, does not do so within four days.

The present case requires us to consider this. Application for a copy was made on the 29th June, but a requisition to draw up the order was not given till 15th July. Meanwhile, of course, the application for a copy was entirely ineffective.

In my opinion the decisions show that the proper way for ascertaining whether the appellant is in time is to look first at the date on which he applied for a copy. By that date so many days out of the twenty given to him by Art. 151 of Schedule I of the Limitation Act had been exhausted, and he had so many left. The time requisite for obtaining the copy begins to run in his favour from that date. But if he could and should have applied to have the order drawn up before any such application was in fact made whether by himself or any other party or, if unnecessary delay was occasioned by his conduct at any of the other points at which time was within his control, he can get no credit for the time wasted. Such time as well as the time elapsing between the

1927

 SARAT
CHANDRA
KHAN
v.

 UPENDRA
NATH BOSE.

RANKIN C J.

1927

SARAT
CHANDRA
KHAN
v.

UPENDBA
NATH BOSE.

RANKIN C J.

obtaining of the copy and the filing of the memorandum of appeal must be debited against the balance remaining to his credit out of the twenty days at the time when he applied for the copy of the order.

Now the order in this case was made on 25th June and the appellant applied for a copy on 29th June, so he had sixteen (if not seventeen) days left to him out of the twenty days allowed. He might and should have applied for the order to be drawn up by (say) 1st July. He wasted fourteen days before doing so on 15th July. He took from 12th to 16th August to approve the order but that period included a week-end. I see nothing else against him, though there was some delay between 3rd September when he paid the fees and 14th September when he got the copy. But in any case if we go back a fortnight from 3rd September that only takes us to 20th August. As at that date the appellant had sixteen days still to run out of the twenty allowed to him he was not therefore out of time when on 27th August the long vacation commenced and as the memorandum was filed by the opening day in November he is not barred by the statute.

In these circumstances, an order may be made approving of the index as set forth in paragraph 6 of the petition and giving fourteen days from to-day as time in which to file the paper-book.

Costs of this application to be respondent's costs in the appeal.

The judgment, if any, to be included in the paper-book.

GHOSE J. I agree.

Attorneys for the appellant: *Chatterji & Co.*

Attorney for the respondent: *Sris Chandra Bose.*
N. G.