

APPELLATE CIVIL.

Before Subrawardy and Jack JJ.

MAHAMMAD ISMAIL CHAUDHURI

v.

KALICHARAN SINGH.*

1930

Dec. 5.

Limitation—Exclusion of time—Holiday or holidays immediately following the date of notification of requisite stamps and folios for copies, if and when excluded—Indian Limitation Act (IX of 1908), s. 12.

In computing the period of limitation in an appeal, the day or days immediately following the date of notification of stamps and folios required for copies by the court's office shall be excluded in every case, even though the requisite stamps and folios are not supplied by the party on the reopening day after such holidays, *i.e.*, even if the entire period intervening between the date of notification and the date of supply of stamps and folios does not fall within holidays.

APPEAL FROM APPELLATE DECREE.

The facts are sufficiently set out in the order.

Bankimchandra Mukherji and Baidyanath Banerji
for the appellant.

SUHRWARDY J. Mr. Bankimchandra Mukherji, with Mr. Baidyanath Banerji, presents this memorandum of appeal before us and states that the Stamp Reporter holds that this appeal is out of time.

In this matter, it appears that the application for the copy of the decree was filed on the 5th September, 1930 and the requisition for stamps and folios was notified on the 6th September, 1930. The 7th September was a Sunday and the requisite stamps and folios were supplied on the 10th September, 1930. This memorandum of appeal was presented in the office on the 2nd December, 1930. The question is whether the 7th September, 1930, which was Sunday, should be excluded in computing the period according to the rules contained in *General Letter No. 16, dated the 2nd September, 1918 (1)*. If that Sunday be excluded from computation, ~~the appellant~~

(1) *Vide Calcutta Gazette*, dated 25th September, 1918, Part I, page 1378.

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is within time, and if he is not entitled to exclude that day, he is out of time by one day. It appears to us that, under clause (2) (i) of the rule in General Letter No. 16, any holiday or holidays immediately following the day or period mentioned in clause (i) should be excluded. Under first clause, the period from 5th September, when the application for copy was made, to the date when the notices for requisite stamps and folios were given, namely the 6th September, 1930, should be excluded and also the day following that period if such day happens to be a holiday. Under the rule, as it stands, we are of opinion that 7th September, 1930, which was a Sunday, should be excluded in computing the period. We do not, therefore, agree with the Stamp Reporter that the time occupied in filing the folios can only be deducted if the entire period falls within holidays.

Let the appeal be registered as filed within time.

JACK J. I agree.

A. A.