

APPEAL FROM ORIGINAL CIVIL,

Before Buckland and Costello J.J.

1933

Dec. 11.

BRIJLAL GANERIWALLA

v.

GIREENDRASHEKHAR BASU.*

Appeal—Limitation—Extension of time—Indian Limitation Act (IX of 1908), s. 12(2).

Where the draft decree had been settled and passed but could not be signed and filed because the appellants had neglected to rectify an error in the petition for amendment of the plaint, according to the Court's order, the time occupied thereafter in completing the order for amendment is not time requisite for obtaining a copy of the decree and cannot be excluded in computing the period of limitation.

Pramatha Nath Roy v. Lee (1) applied.

APPLICATION by plaintiffs-appellants.

The facts of the case appear fully from the judgment.

S. N. Banerjee (with him *N. C. Chatterjee*) for the appellants. The appellants are not responsible for the delay in obtaining copy of the decree.

N. N. Sircar, Advocate-General (with him *R. C. Ghose*) for the respondent. The appellants are not entitled to the benefit of the delay in drawing up of the decree, as the delay was due to their negligence in not having the order for amendment completed. *Pramatha Nath Roy v. Lee* (1), *Sarat Chandra Khan v. Upendra Nath Bose* (2).

Banerjee, in reply.

BUCKLAND J. This is an application made on behalf of the plaintiffs-appellants, for an order that

*Application in Original Suit No. 1523 of 1932 for leave to file Memorandum of Appeal.

(1) (1922) I. L. R. 49 Calc. 999; (2) (1927) I. L. R. 54 Calc. 481, 482.
L. R. 49 I. A. 307.

the memorandum of appeal, which has been tendered and rejected on the ground that it is out of time, be filed, and, in the alternative, that, if necessary, the time for filing the memorandum of appeal be extended. The time, within which an appeal has to be filed from this Court in its Ordinary Original Civil Jurisdiction, is twenty days from the date of the judgment or order, appealed against, as is well known, and the question which arises in this case is whether the appellants are within time, having regard to the terms of section 12(2) of the Indian Limitation Act.

The circumstances and relevant dates are as follows: Shortly before the suit came on for hearing and on the 15th of June, 1933, an order for amendment of the plaint was made and, on the same day, the requisition to have the order completed was filed. On the 16th of June, that order was settled and passed. Nothing remained to be done but to make and verify the amendments and have the order signed, sealed and filed. Hariprasad Ganeriwalla, one of the plaintiffs, attended at the office of the Registrar for the purpose of verifying the amended plaint. He was not, however, allowed so to do, because he proposed to sign the verification at the court house, whereas the verification of the amendment stated that the verification had been signed at No. 9, Old Post Office Street. This has been referred to in affidavits filed as "a defect in the petition," though it is common ground that the defect was as I have stated. But for this I have little doubt that the completion of the order for amendment of the plaint would have gone through at once, and the question which now arises for determination would not have arisen. On the 19th of June, the suit came on for hearing, and, on the 20th of June, a decree was made, the decree against which it is desired to appeal. Between the 22nd of June and the 31st of July, all proper steps to have the decree drawn up and filed appear to have been taken and nothing turns upon anything that happened or that was omitted to be done between those dates. On the 31st July, the draft decree was

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settled and passed and it could, in the normal course of events, have been signed and filed within a day or two. A difficulty, however, arose, because the plaint had not been amended in accordance with the Court's order of the 15th of June and, until that had been done, the decree could not be completed. On the 7th of August, Mr. A. N. Das, the solicitor for the respondent Gireendrashekhar Basu, wrote to the Registrar a letter, in which he set out the facts and the circumstances up to that time, complaining that he was informed by the Decree Department that, unless the order of the 15th of June had been filed and the cause title and register had been amended, the decree of the 20th of June could not be filed and no office copy thereof could be issued. He, being the solicitor for the successful party, as he wrote, required office copies of the order and the decree, for the purpose of taxing his bill of costs to be realised from the plaintiffs, and, accordingly, he requested the Registrar to take whatever steps might be necessary to file the order and the decree. Thereupon, the Registrar took the matter in hand and, on the 8th of August, issued a notice to the solicitors for the plaintiffs, informing them that the order for amendment of the plaint made on the 15th of June could not be completed, because of the defect in the amended verification clause in the exhibit to the petition filed on that date, that is to say, the petition praying that the amendment should be made, and exhibiting, I conceive, a fair copy of the plaint in the form in which it was desired to amend. The Registrar, accordingly, requested the solicitors to rectify the defect by the 16th of that month, failing which he proposed to place the matter before the Acting Chief Justice for directions. The Registrar, however, drew the attention of Ameer Ali J. to the matter and he gave the necessary directions. The defect was remedied and, on the 18th of August, 1933, the order for amendment was signed. It was sealed on the following day and filed on the 22nd of August.

This obstacle being out of the way, the decree was signed on the 25th of August and filed on the 28th of August. On the following day, the plaintiffs supplied the stamps necessary to obtain an office copy of the decree, which was ready for delivery on the 4th of September, and the memorandum of appeal was tendered on the 13th of November. The Court was closed for the vacation from the 1st of September until the 11th of November. The 12th was a Sunday and the memorandum, therefore, was tendered on the first day on which that could be done after the re-opening of the Court.

It is argued on behalf of the appellants that the time between the 31st of July and the 22nd of August should be excluded as that period was occupied in relation to the order of the 15th June. On behalf of the respondents it is submitted that, had the appellants taken all necessary steps immediately their attention was drawn to the error in the verification of the amended plaint, the order for amendment would have been settled, passed and filed with ordinary expedition and, in any circumstances, before the decree was signed and filed, but, instead of dealing with the two matters simultaneously, the appellants delayed the completion of the decree by neglecting to take the steps necessary to have the order for amendment completed, by reason of which they should not be allowed to exclude from the time requisite for obtaining a copy of the decree the time occupied in drawing and completing the order for amendment in computing the period of limitation. I do not think anything turns upon any question of procedure in the office. Mr. Banerjee was disposed to argue that the actual amendment of the plaint, which is done by an officer of the Court and initialled or signed by the Registrar and has again to be verified, was a different matter to the completion of the order under which that is done, but it appears that the completion of the order itself and giving effect to it in the manner stated are all performed simultaneously. It does not seem to me that it is open to Mr. Banerjee to suggest,

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and it was no more than a suggestion, that, whether or not the verification was corrected, the order should have been drawn up and that, in those circumstances, the delay in drawing up the order is to be charged to the office of the Court and not to his client. Even if such a distinction could be made, the fact remains that it was due to the plaintiffs' delaying in remedying a defect in a document, for which they were responsible, that the decree was not completed. The Deputy Registrar, when the memorandum was first tendered, dealt with the matter. He pointed out in his order of the 18th of November that "though the "draft of the order for amendment of the 15th of "June last was settled and passed the next day it "could not be completed till the 22nd August last "because of certain defects in the petition for "amendment," which, as I have explained, refers to the error in the form of verification, "which was "rectified only on the 17th August last with the "sanction of the Hon'ble Mr. Justice Ameer Ali".

These are the facts and circumstances of this matter. It is contended that applying section 12(2) of the Limitation Act, which provides that:—

in computing the period of limitation prescribed for an appeal,
* * * the day on which the judgment complained of was
pronounced and the time requisite for obtaining a copy of the decree,
* * * appealed from shall be excluded,

the period between the 31st of July and the 22nd of August was not time requisite for obtaining a copy of the decree appealed from. The matter of the exclusion of time requisite for obtaining a copy of the decree appealed from has been considered by this Court on more than one occasion, but the leading authority on the point, which has been followed during the last twelve years, is the well-known case of *Pramatha Nath Roy v. Lee* (1). In delivering the judgment of the Board, Lord Buckmaster observed:—

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.

(1) (1922) I. L. R. 49 Cal. 999 (1003); L. R. 49 I. A. 307 (310).

It is now established that it is not sufficient to say that there is no decree or order in existence of which a copy can be obtained. The principle upon which the judgments have proceeded is that any delay in obtaining a copy of the decree or order for which delay the appellant is responsible is not to be excluded in computing the time requisite for obtaining such a copy. In my experience, cases which have come before the Court where such delay has taken place have been cases where the delay has been due to neglect in filing an application for a copy or in filing the decree or order complained of or in supplying the requisite stamps, something relating to the decree or order itself. The circumstances before us on this appeal are novel to me, but, nevertheless, if the principles laid down by their Lordships of the Privy Council in the case referred to are applied, the appellants, in my judgment, are within the rule there formulated. No doubt, they applied at once for a copy of the decree. They did so on the 22nd June. Once the decree was signed and stamps for the copy had been furnished they would have received a copy. That, in the ordinary course, would have been shortly after the 31st July. But that could not then be done, because there was then no decree in existence, of which a copy could be supplied to them, nor did any decree come into existence until the 25th August. Had they taken steps promptly to have the error, which was found to exist, rectified at once, upon it being brought to their notice, there can be no question that the order for amendment of the plaint would have been completed in every respect by the time when the decree was ready to be filed, which was the 31st of July. Consequently, for such delay the appellants must be held responsible, and if the time from the 31st July to the 22nd August is excluded, there can be no question that the appellants are out of time. A suggestion was made at one time before the Registrar that, in any view, the appellants only lost seventeen days, that is to say, between the 31st July and 17th

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August, because, on the 17th August, the order for amendment dated the 15th of June was signed. But that order was not filed until the 22nd of August, and it was only upon that order being filed that the decree could be signed. Actually, it would appear that the time occupied in rectifying the order for amendment was the period between the 7th of August and the 22nd of August, a matter of about a fortnight, and the appellants cannot possibly contend that, had the matter been taken in hand during the six weeks or so which elapsed between the making of the decree and the date when it was settled and passed, the order for amendment could not have been completed in time.

In my judgment, the memorandum of appeal was rightly rejected and this application should be dismissed with costs, *i.e.*, the costs of this application and any costs in relation thereto properly incurred.

COSTELLO J. I am of the same opinion.

Application dismissed.

Attorneys for appellants: *C. C. Bosu & Co.*

Attorney for respondent: *A. N. Das.*

S. M.