

APPELLATE CIVIL.

Before Sir Arthur J. H. Collins, Kt., Chief Justice, and
Mr. Justice Parker.

1886.
July 15, 23.

VENKATRÁYUDU (PLAINTIFF), APPELLANT,
and
NÁGADU AND OTHERS (DEFENDANTS), RESPONDENTS.*

Limitation Act, s. 5—Admission of appeal out of time—Order set aside at hearing.

An order made *ex parte*, under s. 5 of the Indian Limitation Act, 1877, admitting an appeal after the period prescribed therefor, may be set aside on proper cause being shown by the Court which made it.

APPEAL from the decree of W. J. H. LeFanu, Acting District Judge of Kistna, confirming the decision of V. A. Narasimharázu, District Múnsif of Karemputi, in suit 175 of 1883.

The plaintiff, Gudipádi Venkatráyudu, sued the defendants, Siddela Nágado and three others, to establish his right to certain land.

On the 24th September 1883, judgment was given for plaintiff, on the ground that defendant "was not ready with his witnesses."

Defendants Nos. 1—3 then prayed for a review, which was granted.

The case was reheard and the suit dismissed.

Plaintiff appealed.

The appeal was presented out of time, but admitted.

At the hearing, defendants objected that the appeal had been wrongly admitted and plaintiff objected that the Múnsif had wrongly admitted the review.

The Judge held that the Múnsif was wrong in admitting the review, and that, on the merits, plaintiff was entitled to succeed; but dismissed the appeal without costs on the ground that it should not have been admitted.

Plaintiff appealed to the High Court on the ground, *inter alia*, that the District Judge had no power to cancel his original order, admitting the appeal, after the said appeal had been placed on the register.

* Second Appeal 993 of 1885.

*Subbaráya*du and *Kaliánardmayyar* for appellant.

Venkatasubba Ráu for respondent.

The Court (Collins, C.J. and Parker, J.) delivered the following

VENKAT-
RÁYUDU
v.
NÁGADU.

JUDGMENT :—The District Judge has dismissed the appeal on the ground that it was presented out of time, and it is urged upon us that he had no power to review his previous *ex parte* order admitting the appeal.

We cannot agree in this contention and we are of opinion that an order made *ex parte* under s. 5 of the Limitation Act may, on proper cause shown, be set aside by the Court which made it—see *Jhotee Sahoo v. Omesh Chunder Sircar*, (1) *Dubey Sahai v. Ganeshi Lal*. (2) We do not see that the Judge exercised his discretion in an unreasonable or improper manner, and must dismiss this second appeal; but, under the circumstances, we will make no order as to costs.

APPELLATE CIVIL.

Before Sir Arthur J. H. Collins, Kt., Chief Justice, and Mr. Justice Brandt.

UNNIRAMAN (DEFENDANT No. 1), PETITIONER,

and

CHÁTHAN (PLAINTIFF), RESPONDENT.*

1886.
July 12.

Civil Procedure Code, s. 622—Award—Error of Procedure—Relief refused on equitable grounds.

R.M., party to a suit, having authorised his agent to conduct the suit, the agent consented to the case being referred to arbitration by the court. The arbitration was carried on to the knowledge and with the assent of R.M.

On an application by R.M., under s. 622 of the Code of Civil Procedure, to set aside the award made by the arbitrators on the ground (1) that his pleader had not been authorised in writing, as required by s. 506 of the Code, to apply for arbitration, and (2) that he himself had not consented to the reference:

Held that, under the circumstances, R.M. was not entitled to relief.

APPLICATION under s. 622 of the Code of Civil Procedure to set aside an order of P. J. Ittiyarah, District Munsif of Angadipú-

(1) I.L.R., 5 Cal., 1.

(2) I.L.R., 1 All., 34.

* Civil Revision Petition 21 of 1886.

Note.—See also I.L.R., 13 Cal., 78.