APPELLATE CIVIL.

Before Mr. Justice Muttusámi Ayyar and Mr. Justice Hutchins.

1885. July 28.

In re KOTA.*

Court Fees Act, s. 14, *sch.* I, *arts.* 4, 5—*Review of judgment—Stamp duty—Ninety days—Computation of time.*

In computing the period of eighty-nine days from the date of decree, within which an application for review of judgment may be presented on payment of half the fee leviable on the plaint or memorandum of appeal (under art. 5 of sch. I of the Court Fees Act, 1870), the time during which the Court is closed for vacation cannot be excluded.

THE question raised in this case was whether the petitioner was entitled to present a petition of review of judgment on payment of the Court fee leviable under art. 5 of sch. I of the Court Fees Act, after ninety days had elapsed from the date of the decree, on the ground that the Court was closed for two months, during which period the time had expired, the petition being presented on the re-opening of the Court.

Mr. *Wedderburn* for petitioner.

The Court (Muttusámi Ayyar and Hutchins, JJ.) delivered the following judgments:—

HUTCHINS, J.—I am clearly of opinion that the petitioner must pay the full stamp. I have already ruled in the Admission Court that art. 4 in the first schedule of the Court Fees Act must be construed strictly and cannot be modified by any argument from analogy, based on provisions contained in the law relating to limitation of suits, &c., and the same view was taken in Civil Miscellaneous Petition, No. 431 of 1884, by the late Chief Justice and Mr. Justice Muttusámi Ayyar, who held that the applicant for review must pay the full stamp, as the Court Fees Act did not recognize any allowance for the time requisite to obtain a copy.

In the present case the ninetieth day from the date of the decree fell on the 23rd May during the Court vacation. The

* Civil Miscellaneous Petition 307 of 1885.

petition for review would not have been received then even if presented. It was presented on the day that the Court re-opened. It is therefore clearly in time so far as limitation is concerned under s. 5 of the Limitation Act, 1877. But so was Miscellaneous Petition, No. 431 of 1884, under s. 12 of the same Act, which declares that, for purposes of limitation, the time requisite for obtaining a copy shall be excluded.

The wording of the Court Fees Act, taken by itself, seems perfectly plain. Article 4 says if the application is presented on or after the ninetieth day, it shall pay the same stamp as the plaint. Article 5 reduces the fee by one-half if the application is presented before the ninetieth day. It is perhaps not altogether without significance that the full stamp is put first as the rule, and the levy of half the stamp treated as a concession or exception; but I do not wish to lay stress on that, for the words are plain enough anyhow.

In contending that the full stamp is not necessary, Mr. Wedderburn relies on s. 377 of the first Code of Civil Procedure and on the Full Bench decision of the High Court of Calcutta in *Narayan Mandal* v. *Beni Madhal Sircar*(1), and he argues that the Limitation Act is *in pari materiâ* with the Court Fees Act and that, therefore, regard may be had to the former in interpreting the latter.

It seems to me, however, that the two Acts are not at all *in pari materiâ*. It is true that the old Code generally dealt indiscriminately with matters of stamp, matters of limitation and matters of procedure, but the inconvenience of this soon became apparent and they have long since been separated and are governed by distinct Acts, each of which contains its own rules and principles. In this very point of delay, for example, the Limitation Act has its s. 5 containing a proviso that an application for review may be admitted freely after the period of limitation if the applicant can show sufficient cause for the delay. The Court Fees Act, on the other hand, has its fourteenth section, the provisions of which are not quite similar though evidently aimed at the same class of cases, and it seems to me that in regard to stamp questions that alone can be looked to. In my opinion, this section shows beyond all doubt that the full stamp must be paid in all cases after the eighty-ninth

(1) 4 B.L.R. (F.B.), 32.

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day, whatever the cause of the delay, but it allows the Court to certify for a refund if satisfied that the delay was not caused by the applicant's laches. It is argued that, in this case, there has been no delay, but the section itself shows that it is not speaking of delay caused by laches but simply of the eighty-ninth day having been allowed to pass from causes for which the applicant cannot be held responsible.

And when I look at s. 377 of the old Code I find that the law was precisely the same then. The Court could excuse delay for purposes of limitation but it was never authorized to excuse payment of the stamp. "The application shall be made within ninety days . . . . unless the party preferring the same shall show just and reasonable cause . . . . If made within the period above-mentioned, it shall be written on the stamp paper prescribed for petitions . . . . but if made after the expiration of that period, it shall be written on the stamp prescribed for plaints." The second clause was absolute and the proviso in the first clause could not be imported into it. The "period above-mentioned" must refer to the ninety days and not the ninety days *plus* any time allowed by the Court, for no application was receivable at all after the ninety days so extended, and if every application made within the ninety days so extended were to bear a petition stamp, there would be nothing left on which a plaint stamp could be levied. On the true construction of s. 377, as on that of the present law, it seems to me that the Court has no jurisdiction to look at the petition or consider whether it is or is not barred by limitation, whether certain days must be excluded or others can be excused, until it has been properly stamped; and the proper stamp depends on the mere arithmetical calculation of the number of days since the date of decree.

The Calcutta case referred to does not touch the question of the stamp, for the applicant had been required to pay, and had paid, the full stamp prescribed for a plaint. If he had not, his petition would have been dismissed on those grounds. The decision only dealt with the question of limitation and even upon that it is at variance with a decision of this Court—*K. J. Subburajulu* v. *N. Venkataraya*(1)—and was professedly based to a great extent on the practice of the Northern Presidency.

(1) 2 M.H.C.R., 268.

I would allow the petitioner twenty days to pay up the full stamp.

MUTTUSÁMI AYYAR, J.—This is an application for review of judgment. It was presented on the day the Court was re-opened after the last vacation, but the ninety days prescribed for its presentation expired on the 23rd May when the Court was closed. The question raised for our decision is whether, for purposes of Court fees, it is governed by art. 4 or art. 5, sch. I, of Act VII of 1870.

Article 4 directs that full stamp should be paid if the application is presented "on or after the ninetieth day from the date of the decree." Article 5 prescribes half stamp "if presented before the ninetieth day from the date of the decree." Taking the articles by themselves, it is clear that the liability to pay full stamp accrues on the expiration of eighty-nine days from the date of decree. The words used in the articles are clear and unambiguous; and they afford no ground for the contention that, when the Court is closed on the ninetieth day, they ought to be taken to refer to that date after the ninetieth day on which the Court is re-opened.

Our attention was drawn to s. 14 of Act VII of 1870 as supporting this contention. It provides that "when an application for review of judgment is presented on or after the ninetieth day from the date of the decree, the Court, unless the delay was caused by the applicant's laches, may in its discretion grant him a certificate authorizing him to receive back from the Collector so much of the fee paid on the application as exceeds the fee which would have been payable had it been presented before such day." This section treats every application presented on or after the ninetieth day as presented out of time and authorizes the Court to refund the excess stamp in its discretion, unless the delay is caused by the applicant's laches. According to it, there may be delay but it may not amount to laches, and in such cases the Court is to have a discretion. When the delay amounts to laches, no refund is to be made. The apparent intention is to require full stamp in every case of delay after the eighty-ninth day from the date of the decree, and to permit a refund at the discretion of the Judge when the delay is not due to the applicant's laches.

In the case before us, it cannot be said that there was no delay by reason of the vacation, though the delay was not due to the applicant's laches.

It might no doubt seem anomalous at first sight that the time

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during which the Court was closed for the vacation should be treated as delay. It is possible that a special arrangement might be made for the reception of material papers during the vacation and duly notified, and in that case the Court might reasonably hold that the delay amounted to laches and refuse a refund.

Another contention is that the period of ninety days, which is referred to in the Court Fees Act, is the period prescribed by art. 173, sch. II, of Act XV of 1877, that that Act should be treated as one *in pari materiâ* with the Court Fees Act and that s. 5 of the one enactment should be read as if it were part of the other. It does not appear to me, on further consideration, that it would be accurate to say that the two Acts are *in pari materiâ*. Their object-matter is not the same, and the delay in excess of the prescribed period may be treated strictly for fiscal purposes, whilst it may be differently treated for purposes of limitation. As to the Calcutta case cited, the decision proceeded on the ground of the practice which obtained in that Presidency with reference to s. 377 of Act VIII of 1859. I do not consider that the circumstance of the provision as to stamp and the provision as to the limitation of ninety days having been inserted together in that section can be accepted as a sufficient warrant for the contention that s. 5 of the Limitation Act should be read as if it formed part of Act VII of 1870. The suggestion is at variance with the language of s. 14 of the last-mentioned enactment.

On these grounds, I also come to the conclusion that we must follow the decision of this Court in Civil Miscellaneous Petition, No. 431 of 1884, and direct that the application should be on full stamp.

APPELLATE CIVIL—FULL BENCH.

Before Mr. Justice Kernan (Officiating Chief Justice), Mr. Justice Muttusámi Ayyar, Mr. Justice Hutchins, Mr. Justice Parker, and Mr. Justice Handley.

1885. November 6.

REFERENCE FROM THE BOARD OF REVENUE UNDER S. 46 OF THE INDIAN STAMP ACT, 1879.*

Stamp Act, s. 67.

The second clause of s. 67 of the Indian Stamp Act, 1879, is not controlled by the first clause of the section, which refers only to bills of exchange and promissory

* Referred Case 5 of 1885.