

APPELLATE CIVIL.

Before Mr. Justice Devadoss and Mr. Justice Wallace.

THE SECRETARY OF STATE FOR INDIA IN COUNCIL,
PETITIONER IN ALL S.Rs.*

1925,
April 16.

Leave to appeal to Privy Council—Sec. 12 (3), Limitation Act (IX of 1908)—Whether time requisite for obtaining copy of judgment can be deducted.

In the case of an application for leave to appeal to the Privy Council the time requisite for obtaining a copy of the judgment appealed against, can, under section 12 (3) of the Limitation Act, be excluded in calculating limitation. *Mahabir Prasad Tewari v. Jamuna Singh* (1922) I.L.R., 1 Pat., 429, followed.

PETITIONS under Order XLV, rule 2, and under section 109, clauses (b) and (c), and section 110, Civil Procedure Code, sought to be presented to the High Court, praying that the High Court will be pleased to grant certificates enabling the petitioner herein to appeal to His Majesty in Council against the judgment of the High Court in Second Appeals Nos. 1356, 1355, 1354 and 1357 of 1921 preferred against the decrees of the District Court of Chingleput in Appeal Suits Nos. 400, 399, 398 and 401 of 1919, against Original Suits Nos. 504, 503, 470 and 505 of 1918 on the file of the Court of the District Munsif of Poonamallee.

Section 12 (2) and (3) of the Limitation Act is as follows:—

(2). In computing the period of limitation prescribed for an appeal, an application for leave to appeal and an application for a review of judgment, the day on which the judgment complained of, was pronounced, and the time requisite for obtaining a copy of the decree, sentence, or order appealed from or sought to be reviewed, shall be excluded.

* Stamp Register Nos. 1226 to 1228 and 1231 of 1925.

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INDIA, *De ce.*

(3) Where a decree is appealed from or sought to be reviewed, the time requisite for obtaining a copy of the judgment on which it is founded shall also be excluded.

The facts are given in the judgment.

K. S. Sankaran Ayyar for *Advocate-General* for the petitioner.

JUDGMENT.

The question for decision is whether, in the case of an application for leave to appeal to the Privy Council, the time requisite for obtaining a copy of the judgment appealed against may be excluded in calculating limitation.

Section 12 of the Indian Limitation Act is now made applicable by the Privy Council Rules to such applications, but the difficulty is that, while sub-section (2) applies in terms to "an application for leave to appeal," sub-section (3) does not. But we think that, though sub-section (3) does not in terms apply, the language used in it really covers the present case. Under sub-section (2) when an application for leave to appeal is put in, the time requisite for obtaining "a copy of the decree appealed from" may be deducted. Here the phrase quoted really implies "a copy of the decree sought to be appealed from" as the decree cannot strictly be "appealed from" until leave to appeal has been given. There is no reason why the phrase "decree appealed from" when used in sub-section (3) should be given any different interpretation. Sub-section (3) therefore in the case of an application for leave to appeal really means "when a decree is sought to be appealed from . . ." That is the present case and time requisite for obtaining a copy of the judgment may therefore be excluded.

That position is also very reasonable, since a proper application for leave to appeal cannot be drawn up unless

the party or his pleader has before him a copy of the judgment.

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Authority on the point is scant. *Mahabir Prasad Tewari v. Jantuna Singh*(1) is direct authority, though the reasons given are not those we have given. *Anderson v. Periasami*(2) was under the old section 12 in which "applications were limited to applications to appeal *in forma pauperis* and therefore section 12 could not be then called in aid at all.

We rule that time requisite for obtaining copy of judgment should be excluded.

N. R.

APPELLATE CIVIL.

Before Mr. Justice Spencer and Mr. Justice Ramesam.

1925,
April 30.

PETA NAGAYYA (THIRD WITNESS FOR DEFENDANTS).

APPELLANT.*

Order XVI, rules 10, 11, 12, Civil Procedure Code—Imposition of fine on refractory witness without previous proclamation or attachment of his property, validity of.

Neither the issue of a proclamation nor an order for attachment of property under rules 10 and 11 of Order XVI of the Code of Civil Procedure is a condition precedent to the imposition of a fine on a refractory witness, under rule 12. *Ashutosh Mullick v. Secretary of State for India* (1920) 57 I.C., 302, and *Ram Gopal v. Secretary of State for India* (1920) 55 I.C., 425, dissented from.

APPEAL against the order of the Additional Subordinate Judge of Masulipatam in Original Suit No. 47 of 1923.

The facts are given in the judgment.

A. Venkatachalam for appellant.

The Government Pleader for respondent.

(1) (1922) I.L.R., 1 Pat., 429.

(2) (1892) I.L.R., 15 Mad., 169.

* Appeal against order No. 360 of 1924.