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it is now necessary to ascertain whether the payments notified to the Courts by the decree-holder on the 2nd March, 1882, and the 26th April, 1883, were, in fact, payments by the judgment-debtor, and the case must be remanded to the lower appellate Court under s. 566 of the Code for a finding on the above points.

Upon a return of the findings, ten days will be allowed to the parties for objections.

TYRRELL, J.—I am by no means satisfied that the applications of March, 1882, and April, 1883, can be considered as "steps in aid of execution" in the sense of cl. 4, art. 179 of the Limitation Act; but the view of the lower appellate Court being supported by the authority of a Calcutta ruling, I am unwilling to interfere with its decision so far. The truth of the statements of the decree-holder as to these payments must be ascertained. I concur therefore in the order of remand proposed by Mr. Justice Mahmood.

Issues remitted.

Before Mr. Justice Tyrrell and Mr. Justice Mahmood.

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HUSAINI BEGAM (PLAINTIFF) *v.* THE COLLECTOR OF MUZAFFARNAGAR AND OTHERS (DEFENDANTS).*

Appeal—Admission after time—Act XV of 1877 (Limitation Act), s. 5—"Sufficient cause"—Poverty—Pardah-nashin—Civil Procedure Code, s. 220—Costs.

In February, 1884, the High Court dismissed an application by a Muhammadan *pardah-nashin* lady, under s. 592 of the Civil Procedure Code, for leave to appeal as a pauper from a decree passed in September, 1882, on the ground that it was barred by limitation. On the 16th August, 1884, an order was passed allowing an application which had been made for review of the said order to stand over pending the decision of a connected case which had been remanded for re-trial under s. 562 of the Code. On the 24th April, 1885, the connected case having then been decided, the application for review was heard and dismissed. On the 18th June, 1885, an order was passed *ex-parte* by PETHERAM, C. J., allowing the applicant, under s. 5 of the Limitation Act (XV of 1877), to file an appeal on full stamp paper, and she thereupon, having borrowed money on onerous conditions to defray the necessary institution-fees, presented her appeal, which was admitted provisionally by a single Judge.

Held by TYRRELL, J., (MAHMOOD, J., dissenting) that the appellant had made out a sufficient case for the exercise of the Court's discretion under s. 5 of the Limitation Act, and that the Court should proceed to the trial of her appeal.

Held by MAHMOOD, J., that the *ex-parte* order of the 18th June, 1885, was one which the Civil Procedure Code nowhere allowed and was *ultra vires*, and

* First Appeal No. 139 of 1885, from a decree of Maulvi Muhammad Maksud Ali Khan, Subordinate Judge of Saháranpur, dated the 16th September, 1882.

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that the Bench before which the appeal came for hearing was competent to determine whether the order admitting the appeal should stand or be set aside. *Dubey Sahai* v. *Ganeshi Lal* (1) referred to.

Held also by MAHMOOD, J. (TYRRELL, J., dissenting), that the circumstances were such as to require the Court to set aside the order admitting the appeal and to dismiss the appeal as barred by limitation, inasmuch as it was presented more than two years beyond time, and neither the facts that the main reason why it was presented so late was that the appellant was awaiting the result of the connected case, and that the appellant was a pauper and a *pardah-nashin* lady, nor the orders of the 16th August, 1884 and the 18th June, 1885 constituted "sufficient cause" for an extension of the limitation period, within the meaning of s. 5 of the Limitation Act. *Moshaullah* v. *Ahmedullah* (2) and *Mangu Lal* v. *Kandhai Lal* (3) referred to.

Held further by MAHMOOD, J., that although, but for the erroneous order of the 18th June, 1885, the appellant would neither have borrowed the money required to defray the institution-fees nor preferred the appeal, and this was a circumstance to be considered in the exercise of the discretionary power conferred by s. 220 of the Code, it could not be said that the error of a Court of Justice which leads a party to initiate proceedings against another is sufficient to exonerate the losing party from paying the costs incurred by the opposite party, and that the appeal should therefore be dismissed with costs.

THIS appeal had been admitted after time by Tyrrell, J., sitting for the admission of appeals, &c. At the hearing of the appeal it was objected that there was no sufficient cause for presenting the appeal after time, and it should be dismissed. The causes alleged by the appellant for not presenting the appeal within time are stated in the judgments, in which are also stated the other facts of the case.

Mr. *N. L. Paliologus* and Pandit *Sundar Lal*, for the appellant.

Babu *Ram Das Chakarbati*, Pandit *Bishambar Nath*, Munshi *Hanuman Prasad*, Shah *Asad Ali*, Babu *Baroda Prasad Ghose*, Mr. *Simeon*, and Lala *Datti Lal*, for the respondents.

TYRRELL, J.—A preliminary objection has been taken on behalf of the respondents that this appeal is barred by limitation. It is true that it has been preferred a long time after due date, but our power of admitting an appeal under s. 5 of the Limitation Act is large, and is not fettered by considerations of time, provided only the Court be satisfied that the appellant had sufficient cause for not presenting her appeal within the period prescribed therefor. I think that such

(1) I. L. R., 1 All. 34. (2) I. L. R., 13 Calc. 78
(3) I. L. R., 8 All. 475.

cause has been shown by the learned vakíl for the appellant. She is a *pardah-nashin* Muhammadan lady, obviously too impecunious to pay the preliminary charges for this appeal, who, having failed under the bar of limitation only in an attempt to appeal as a pauper, spent a considerable time in efforts to obtain a review of that order, and having finally been refused this remedy, she borrowed funds, at an enormous sacrifice we are informed, and affixed the necessary stamps (Rs. 655) to the memorandum of appeal she had presented to this Court in March, 1883, with her application made under s. 592 of the Civil Procedure Code. This appeal was admitted by me, provisionally of course, on the 17th July, 1885. A good deal was made at the hearing yesterday of an application made to the late learned Chief Justice in June, 1885, reciting all the steps taken theretofore by the would-be pauper-appellant, and laying before Sir Comer Petheram the memorandum of appeal (unstamped of course) filed in March, 1883, and practically asking His Lordship for a month's time to file the necessary stamps. An order allowing this petition was made, and no more. The appeal was not thereby admitted, nor was any order whatever made which would affect the question of its admissibility, either by the Judge sitting out to admit appeals or by the Bench hearing the appeals. This application, and the order made on it by Sir Comer Petheram, may therefore be left altogether out of the question. There remains only then the single issue, whether this particular appellant has made out a sufficient case for the exercise of our discretion in this behalf; and I hold that she has, and that we ought to proceed to the trial of her appeal.

MAHMOOD, J.—I very much regret that in this case I am unable to agree in the order which my learned brother Tyrrell has made, and that I hold that this appeal cannot be entertained by us because it is barred by limitation. The facts of the case are, that the decree from which this appeal has been preferred was passed by the Court below on the 16th September, 1882, and no appeal was preferred from it up to the 22nd March, 1883. Upon that day an application was made for leave to appeal as a pauper, but it was then more than two months beyond the period of limitation. The application then came on for hearing before a Bench consisting of the present learned Officiating Chief Justice and my learned brother

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Tyrrell, who dismissed the application on the 14th February, 1884, holding that under the law they had no power to admit the application, which was obviously barred by limitation. Then it appears that some time in May, 1884, the present appellant prepared an application for review of the order just mentioned, and presented the application on the 10th June, 1884, and the application was allowed to remain pending, pursuant to an order dated the 16th August, 1884, on account of the pending of a cognate case, being First Appeal No. 21 of 1883. The application then appears to have stood over until the 24th April, 1885, when it came on for hearing before a Divisional Bench, consisting of the present learned Officiating Chief Justice and my brother Tyrrell, who dismissed the application for reasons which it is not necessary to refer to here. Then followed an application of a very unusual character, presented on the 18th June, 1885, to the late learned Chief Justice of this Court. The application, after reciting the previous orders in the litigation, went on to say "that on the 8th April, 1885, the said First Appeal No. 21 of 1883 was heard and decreed, and on the 24th April, 1885, your petitioner's application for review was rejected; that if this Honourable Court will be pleased to grant this petition, your petitioner will be in a position to file appeal regularly. Your petitioner therefore humbly prays that she might be allowed to file her appeal under the provisions of s. 5, Act XV of 1877, on full stamp paper." I have called this application one of a very unusual character, because I am not aware of any provision of the law which contemplates such an application. The object of the application was to ask the Court to decide upon the admissibility of an appeal which had not yet been preferred to the Court, and the prayer in the application sought to obtain an order which would in a manner bind the Court to the admission of the contemplated appeal. It was an application admittedly made in order that the petitioner might, by obtaining an order which would afford a sort of guarantee as to the admissibility of a future appeal, be able to have an opportunity of raising money to file an appeal on full stamp, though such appeal would be more than two years and a half beyond the time allowed by the law for such appeals, the provision being found in art. 156, sch. ii of the Limitation Act. Under these circumstances I should have thought there would

scarcely be any reason for departing from the ordinary course observed in this Court of issuing notice to the other side to show cause, the practice being only an illustration of the well-known maxim *audi alteram partem*. The usual practice of this Court was, however, not followed in that case, and the late learned Chief Justice of this Court simply granted the prayer in the application, directing that the memorandum of appeal, duly stamped, was to be presented within one month. The order was made on the 18th June, 1885; but with profound respect for the legal authority of Petheram, C. J., I cannot help holding that the order, considering the nature of the application, was one which our law of procedure in India nowhere allows, and I find myself unable to hold that, in determining the point now before me, I am bound by that order. The law in s. 592 of the Civil Procedure Code does, indeed, allow a pauper to present an application to be allowed to appeal as a pauper; but even such application must be accompanied by a memorandum of appeal as the section requires; but I am not aware of any authority conferred by the Code, or any other law, which would empower the Court to entertain an application such as the one in this case, or to make an order such as Petheram, C. J., made in the case, without apparently hearing the other side, and without having the grounds upon which the anticipated appeal was to be made before him. With all due deference, I cannot but hold that the order was *ultra vires*, and I cannot help feeling that its practical effect has been regretable. For it is urged by the learned pleader for the appellant that it was in consequence of this order that the appellant was able to borrow money on very onerous terms for the purpose of defraying the expenses of this appeal, and he contends that this circumstance is sufficient to induce us to admit this appeal under the exceptional provisions of s. 5 of the Limitation Act. The appeal was, as a matter of fact, admitted by my learned brother Tyrrell on the 17th July, 1885, but subject, of course, to any objection on the ground of being barred by limitation, which might be made by the respondents at the hearing of the appeal before a Bench. There can be no doubt that the order admitting the appeal, made by a single Judge, is not conclusive upon the question, and indeed the Full Bench ruling of this Court in *Dubey Sahai* v. *Ganeshi Lal* (1) leaves no room for doubt upon the point.

(1) I. L. R., 1 All. 344

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The kind of objection contemplated in that ruling has been taken by the respondents now, and I hold that under the circumstances this Bench is entitled to determine whether the order admitting the appeal should stand or be set aside.

I am of opinion that the circumstances of this case are such as require the Court to set aside the order admitting the appeal, and to dismiss it as barred by limitation. This is not a case in which the appeal has been presented two or three months beyond time, but the period here far exceeds two years, and it is apparent from the petition on which Petheram, C. J., passed the order of the 18th June, 1885, that this appeal would not have been preferred but for that order, and that the main reason why the appeal has been preferred so late is, that in the cognate case, First Appeal No. 21 of 1883, this Court had remanded the case to the Court below for trial *de novo*. The order of remand in that case was made on the 7th April, 1885, apparently under s. 562 of the Civil Procedure Code, though the evidence in the case appears to have been on the record. It is not necessary for the purposes of this case to decide whether, with reference to the provisions of ss. 564 and 565 of the Code, that case could have been remanded for trial *de novo*, because, according to my view, whatever the result of that new trial may be, it cannot operate in such a manner as to extend the period of limitation which the law has prescribed for such appeals. For I hold that, however similar two litigations may be, the circumstance that one litigant has prosecuted his case diligently, and has partly succeeded, is not any reason for allowing the litigant in the other litigation to seek his remedy long after the lapse of the period which the law of limitation prescribes. Indeed, any other view of the law would render the statutes of limitation anything but "*statutes of repose*," as Mr. Justice Story or Lord Plunket has called them somewhere; and if the argument of the appellant in this case is to be accepted, there could be no logical reason why this appeal should not be admitted after the lapse of another two or three years, when the cognate case (F. A. No. 21 of 1883) would be decided finally by this Court or by the Privy Council. I have recently dwelt at considerable length upon the policy of the laws of limitation, the manner in which they should be interpreted, and the exact effect of the imperative provisions of s. 4 of our Limitation Act, and my

observations are to be found in my judgment in the case of *Mangu Lal* v. *Kandhai Lal* (1).

In this case the exact point involved is different as a matter of detail, but not as a matter of principle, regarding the construction of the statutes of limitation. The exact point here is—whether, even if the Limitation Act is to be strictly construed in favour of its operation, the present appeal should not be allowed to be admitted long after the prescribed period, by reason of the power which the second paragraph of s. 5 of the Act entrusts to the discretion of the Court as a proviso to the stringent rules contained in s. 4 of that enactment. The second paragraph of s. 5 runs as follows :—

"Any appeal or application for a review of judgment may be admitted after the period of limitation prescribed therefor, when the appellant or applicant satisfies the Court that he had sufficient cause for not presenting the appeal or making the application within such period."

I confess that the expression most important in this paragraph is the phrase "*sufficient cause*," and that the phrase is capable of a great deal of difference of opinion. I also concede that the phrase must be understood with due reference to the circumstances of each case, and I may add that I would have deferred to the view of my brother Tyrrell if I had been able to hold that the discretionary power as to admitting appeals beyond time could possibly be exercised in this case. Because, what is contended here is that the appellant, being a *pardah-nashin* and a pauper, did not apply for leave to appeal as a pauper within time under art. 170, sch. ii of the Limitation Act; that her application was therefore dismissed; that she applied for a review of the order of dismissal, but that application also was dismissed; that her attempts therefore to have her case heard in appeal *in formâ pauperis* were unsuccessful; that having exhausted her remedy in that form, she waited till this Court disposed of the cognate case by remanding it for new trial; that thereupon she obtained an order from the late learned Chief Justice of this Court on the 18th June, 1885, giving her permission to file her appeal on full stamp within a month; that by virtue of that order she was enabled to raise money and present

(1) I. L. R., 3 All. 475.

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her appeal on payment of the court-fees, and that the appeal was admitted; and then the argument is pressed upon us, that because the appellant duly obeyed the order of the late learned Chief Justice, therefore we are bound to reject the respondent's preliminary objection that the appeal is barred by limitation.

This represents the whole line of argument which has been pressed upon us by the learned pleader for the appellant, but I find myself unable to accept it. So far as the question of poverty is concerned, I am perfectly prepared to adopt the rule laid down by Prinsep and Trevelyan, JJ., in *Moshaullah* v. *Ahmed-ul-lah* (1), and I agree with them in the view that "if such ground be accepted as sufficient cause for a special order of this description, there would be no limit to the period for extending the usual term of limitation to presenting an appeal." Applying that rule to the present case, the main ground on which the appellant relies is untenable, nor do I think that her being a *pardah-nashin* woman should be allowed to operate as a reason for relaxing the rules of limitation to the extent sought in this case. The fact of an appellant being a *pardah-nashin* may, no doubt, in some cases furnish grounds for applying the discretionary power contained in the latter part of s. 5 of the Limitation Act; but in my opinion that ground can be available only where the fact has prevented a party from presenting the appeal hers elf, or from retaining counsel to do so. Here the contention practically amounts to saying that whenever an appellant is a *pardah-nashin*, there should be no practical limit to the period during which her appeal must be presented. The condition of being a *pardah-nashin* is far more lasting than even the condition of being a pauper; and if, as the learned Judges of the Calcutta Court have held, poverty is not a sufficient cause within the meaning of s. 5 of the Limitation Act, I should say that being a *pardah-nashin* is not, *ipso facto*, sufficient cause for the application of that section. The other grounds upon which the learned pleader for the appellant relies are, firstly, the order of the 16th August, 1884, directing that the application of the appellant for reviewing the order of the 14th Februray, 1884, dismissing her application to be allowed to appeal as pauper, should stand over, pending the decision in First Appeal No. 21 of 1883;

(1) I. L. R., 13 Calc. 78.

secondly, the order of the 18th June, 1885, which gave a sort of guarantee that the contemplated appeal, namely, the present one, would be admitted if presented on full stamp within a month of that order. I am of opinion that neither of those orders which I have already described constitutes a "*sufficient cause*" within the meaning of the latter part of s. 5 of the Limitation Act, so as to admit this appeal after such a long period beyond the limitation. The appellant has had two adjudications against her in regard to her application to appeal *in formâ pauperis*; and whilst it is clear that this appeal would not have been preferred but for the order of the 18th June, 1885, I cannot hold that the appellant's utilizing that order as a means of borrowing money for payment of the court-fees on her appeal, will enable her to claim the benefit of the latter part of s. 5 of the Limitation Act. Moreover, I cannot doubt —and, indeed, it is apparent from the appellant's own petition, on which the order last mentioned was passed—that she has delayed so long in presenting the appeal because she and her advisers were waiting for the result of the cognate case already referred to. I hold therefore that the latter part of s. 5 of the Limitation Act is not available to the present appellant, and that the appeal is therefore barred by limitation.

The only thing remaining to be considered is—whether, under the peculiar circumstances of this case, the appellant should be ordered to pay the respondent's costs. I have already said enough to indicate that but for the order of the late learned Chief Justice of this Court, passed on the 18th June, 1885, the poor lady-appellant would neither have borrowed the money required to defray the institution-fees of this appeal, nor would she have preferred this appeal. This, no doubt, is a circumstance which I am bound to consider in connection with the discretionary power conferred by s. 220 of the Civil Procedure Code; but I am unable to lay down the rule that the error of a Court of Justice, which leads a party to initiate proceedings against another, is sufficient to exonerate the losing party from paying the costs incurred by the opposite party. I would therefore dismiss this appeal with costs.

Appeal dismissed.