

The order was passed under the provisions of section 488(1) of the Code of Criminal Procedure. The Joint Magistrate found that the applicant, Musammat Kaunsilia, had some two years previous to the date of her application given birth to an illegitimate child. He further found that since that time she had been living with her parents and leading a chaste and respectable life. He held that this one lapse from virtue did not disentitle her to receive maintenance. The learned Sessions Judge has submitted the case to this Court with the recommendation that the order should be set aside. The learned Judge argues that the act of adultery, which the wife is proved to have committed, disentitles her to receive any maintenance. I cannot accept this view. In my judgment the interpretation put by the learned Joint Magistrate on the language of subsection 4 "no wife shall be entitled to receive an allowance from her husband under this section if she is living in adultery" is the right and natural interpretation of the words. It is also the interpretation which, as I have satisfied myself by referring to the records in the cases *Empress v. Nundan* (1), *Petition of Kashi Sheodiala* (2) and *Empress v. Dawlat* (3), has been uniformly placed upon these words by this Court. Let the record be returned.

1904

---

 KALLU  
 v.  
 KAUNSILIA.

---

## APPELLATE CIVIL.

1904

---

 January 20.

*Before Mr. Justice Blair and Mr. Justice Banerji.*

HAMID ALI (JUDGMENT-DEBTOR) v. GAYADIN AND ANOTHER

(DECREE-HOLDERS).\*

*Civil Procedure Code, section 584—Second Appeal—Act No. XV of 1877 (Indian Limitation Act), section 5—Discretion of Court—Extension of time for filing appeal.*

*Held* that no second appeal would lie in a case where the appeal to the Court below was barred by limitation, and that Court in the exercise of its

---

\*Second Appeal No. 532 of 1903, from a decree of Pandit Sri Lal, Additional Judge of Aligarh, dated the 4th March, 1903, confirming a decree of Maulvi Muhammad Ahmad Ali, Subordinate Judge of Aligarh, dated the 5th December, 1900.

(1) Weekly Notes, 1881, p. 37. (2) Weekly Notes, 1881, p. 62.

(3) Weekly Notes, 1881, p. 118.

1904

HAMID ALI  
v.  
GAYADIN.

judicial discretion, after careful consideration of the facts and not arbitrarily, refused to act under section 5 of the Indian Limitation Act, 1877, and dismissed the appeal. *Tulsa Kumwar v. Gajraj Singh* (1) followed.

THIS was an appeal arising out of an application for execution of a decree. In the first Court (Subordinate Judge of Aligarh) the judgment-debtor filed objections to the application for execution, but they were dismissed and an order directing execution to proceed was passed on the 5th of December, 1900. Against this order the judgment-debtor appealed to the High Court, who, on the 21st of February, 1902, returned the memorandum of appeal to the appellant for presentation to the proper Court on the finding that having regard to the valuation an appeal lay not to the High Court but to the District Judge. Accordingly the appeal was presented to the District Judge on the 27th of February, 1902. The decree-holders objected that the appeal was time-barred, and the Court (Additional District Judge of Aligarh), after considering—on an affidavit filed by the judgment-debtor—whether there was any sufficient cause shown for admitting the appeal under section 5 of the Limitation Act, came to the conclusion that there was not and accordingly dismissed it. Against this order the judgment-debtor appealed to the High Court.

Maulvi *Ghulam Mujtaba*, for the appellant.

Pandit *Sundar Lal* (for whom Pandit *Baldeo Ram Dave*) for the respondents.

BLAIR and BANERJI, JJ.—This is an appeal against the dismissal by an Additional Judge of an appeal before him as time-barred. There is no question but that the appeal was time-barred, unless the appellant successfully invoked in aid the provisions of section 5 of the Limitation Act. That section provides that an appeal may be admitted after the period of limitation if the appellant satisfies the Court that he had sufficient cause for not presenting the appeal within the time prescribed by law. It has been held in a recent case, *Tulsa Kumwar v. Gajraj Singh* (1), that it is for the Court below to be satisfied after the exercise of judicial discretion, and if that discretion was exercised after careful consideration of the facts and not arbitrarily, the appellate Court has no power to interfere

(1) (1902) I. L. R., 25 All., 71.

under the provisions of section 534 of the Code of Civil Procedure. With that decision we entirely agree. We dismiss this appeal with costs.

*Appeal dismissed.*

1904

HAMID  
ALI  
v.  
GAYA DIN.

*Before Mr. Justice Blair and Mr. Justice Banerji.*

GIRWAR LAL AND OTHERS (DEFENDANTS) v. LAKSHMI NARAIN  
(PLAINTIFF)\*.

1904  
January 21.

*Appeal in formâ pauperis—Leave to appeal refused—Time granted to file a regular appeal—Limitation—Act No. XV of 1877 (Indian Limitation Act), section 5—Discretion of Court.*

When a District Judge, after refusing an applicant leave to appeal in formâ pauperis, granted time beyond the expiry of the period of limitation for the applicant to file a regular appeal on the full Court fee, it has held that, inasmuch as the appeal could only be admitted by the aid of section 5 of the Indian Limitation Act, 1877, the Court must be taken to have exercised the powers conferred by that section, although the section was not referred to by the Court. *Bai Ful v. Desai Manorbhai Bhavanidas* (1), approved.

In this case Lachhmi Narain sued Girwar Lal and others for recovery of money due under a deed of mortgage, or, in default of payment, for sale of the mortgaged property. The plaintiff obtained a decree in full on the 5th of July, 1900. On the 24th of July, 1900, the defendants applied to the District Judge for leave to appeal as paupers. This petition was rejected on the 16th of January, 1901. On the 14th of February, 1901, the defendants applied for leave to appeal in the usual way, upon which the District Judge passed the following order:—  
“The appeal was not rejected. Permission to appeal as a pauper was refused. \* \* \* I give the appellants one week within which to deposit the necessary Court fee, failing which the appeal will be rejected.” The Court fee was paid in on the 21st of February, 1901. When the appeal, which had been transferred to the Court of the Small Cause Court Judge of Agra acting as a Subordinate Judge, came on for hearing, it was dismissed as time-barred, on the strength of the ruling in *Bishnath Prasad v. Jagar Nath Prasad* (2). The defendants thereupon appealed to the High Court.

\* Second Appeal No. 1093 of 1901 from a decree of Rai Bahadur Babu Baij Nath, Judge of the Court of Small Cause of Agra, dated the 14th August, 1901, confirming a decree of Babu Baidya Nath Das, Officiating Munsif of Agra, dated the 5th July, 1900.

(1) (1897) L. L. R., 22 Bom., 840. (2) (1891) L. L. R., 13 All., 305.