

that the present application is an application to proceed with the previous application which was kept in abeyance on the interposition of a bar. The present application is certainly one within the purview of article 179, schedule II, of the Limitation Act, and as it was not made within three years of any of the dates mentioned in the third column against that article, it was clearly time-barred. I accordingly allow the appeal, set aside the orders of the Courts below, and dismiss the application for execution with costs in all Courts.

*Appeal decreed.*

*Before Sir John Stanley, Knight, Chief Justice, and Mr. Justice Sir William Burkill.*

SHIB SINGHI AND OTHERS (DEFENDANTS) v. GANDHARP SINGH  
(PLAINTIFF).\*

*Civil Procedure Code, section 596—Application for leave to appeal to His Majesty in Council—Limitation Act No. XV of 1877 (Indian Limitation Act), sections 5 and 12).*

*Held* that neither section 5 nor section 12 of the Indian Limitation Act, 1877, applies to applications under section 596 of the Code of Civil Procedure for leave to appeal to His Majesty in Council. *Jawahir Lal v. Narain Das* (1). *In the matter of the petition of Sita Ram Kesho* (2) *Moroba Ram Chandra v. Ghanasham Nilkant Nudkarni* (3) and *Anderson v. Periasami* (4) followed.

THE facts of this case sufficiently appear from the judgment of the Court.

Dr. *Satish Chandra Banerji*, for the applicant.

Munshi *Gulzari Lal*, for the opposite parties.

STANLEY, C.J. and BURKITT, J.—It is admitted that the application for leave to appeal to His Majesty in Council is time-barred unless either section 5 or section 12 of the Indian Limitation Act is applicable to such applications. Article 177 of the second schedule to the Act limits a period of six months from the date of the decree for the admission of such an appeal. The application for leave to appeal was not made within this period, but the applicant relies upon the sections of the Act to which we have referred as justifying the admission of the

1906

LANGTU  
PANDE  
v.  
BALNATH  
SARAN  
PANDE.

1906  
January 27.

\* Privy Council Appeal No. 23 of 1905.

(1) (1878) I. L. R., 1 All., 644.

(2) (1892) I. L. R., 15 All., 14.

(3) (1894) I. L. R., 19 Bom., 301.

(4) (1891) I. L. R., 15 Mad., 159.

1906

SHIB SINGH  
v.  
GANDHARP  
SINGH.

appeal. Section 5, paragraph 2, provides that 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. By section 12 in computing the period of limitation prescribed for an appeal the time requisite for obtaining a copy of the decree, sentence or order appealed against is to be excluded. We shall assume that the applicant had sufficient cause for not presenting his application within the period prescribed by article 177, or that the application was made within time if section 12 of the Act be applicable. In our opinion neither of these sections applies to an application for leave to appeal to His Majesty in Council. An application for leave to appeal clearly does not come within the first portion of section 5, as that portion of the section provides only for cases where the Court is closed when the period of limitation expires. The second portion of the section deals with "any appeal or application for a review of judgment." It is contended that the application for leave to appeal is an appeal within the meaning of this section. It is significant that the first portion of this section deals with the case of any appeal or application, while the second portion of the section only deals with "any appeal or application for a review of judgment," not with "any application." If it were intended that applications generally were to come within the meaning of the latter portion of the section, we should expect to find the words "appeal" or "application" as used in the first portion of the section. Again, the language of section 12 is similar. In the first portion of the section the words used are "in computing the period of limitation prescribed for any suit, *appeal* or *application*," while in the second portion there is a marked change of language, the words used being "in computing the period of limitation prescribed for an appeal and *an application for leave to appeal as a pauper and an application for a review of judgment.*" This change of language in both sections seems to indicate that the latter portions of the sections were not intended to apply to all applications. It is further noticeable that appeals are dealt with in the second of the three

divisions into which the second schedule to the Limitation Act is divided, whilst applications, including an application for the admission of an appeal to His Majesty in Council, are included in the third division.

The question is governed by authority. In the case of *Jawahir Lal v. Narain Das* (1) Sir Robert Stuart, C.J., held that in computing the period of limitation prescribed by article 177 the time requisite for obtaining a copy of the judgment on which the decree was founded cannot be excluded under the provisions of section 12 of the Limitation Act. Spankie, J., dissented from this judgment; but so far as we are aware the ruling of the Chief Justice has been followed up to the present time. In *In the matter of the petition of Sita Ram Kesho* (2) Sir John Edge, C.J. and Tyrrell, J., held that the provisions of the second paragraph of section 5 did not extend to applications for leave to appeal to Her late Majesty in Council. Likewise in the case of *Moroba Ram Chandra v. Ghanasham Nilkant Nadkarni* (3) it was held that an application for leave to appeal to the Privy Council was not an appeal, and that in computing the period of limitation the time required for obtaining a copy of the decree cannot be excluded. The decision in the case of *Anderson v. Periasami* (4) is to the same effect.

We see no reason for dissenting from the views expressed in the cases which we have cited, and hold that the application is time-barred. It is rejected with costs.

(1) (1878) I. L. R., 1 All., 644.

(2) (1892) I. L. R., 15 All., 14.

(3) (1894) I. L. R., 19 Bom., 301.

(4) (1891) I. L. R., 15 Mad., 159.

1906

SHIB SINGH  
v.  
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