

MISCELLANEOUS CIVIL.

Before Mr. Justice Sulaiman, Acting Chief Justice.

BAIJNATH (APPLICANT) v. DULARI HAJJAM (OPPOSITE PARTY).*

1928
May, 17.

Letters Patent, section 10—Amendment of—Rules framed in consequence of amendment—Appeal—Limitation—Extension of time.

A rule of limitation is a rule of procedure and, unless something special in it justifies a contrary inference, governs all proceedings from the moment of its enactment, even though the cause of action may have accrued before the rule came into existence. *Soni Ram v. Kanhaiya Lal* (1), referred to.

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

Pandit Vishwa Mitra, for the applicant.

SULAIMAN, A. C. J. :—This is an application for leave to appeal under the Letters Patent and for extension of time.

Had the judgement been delivered before the amendment of section 10 of the Letters Patent came into force, no leave would have been necessary and a substantive right of appeal could not be taken away by a subsequent amendment of the Letters Patent. The amendment came into force from the date of its publication in the Gazette, namely the 28th of January, 1928. The judgement in the present case was delivered after this date, hence leave is necessary.

As regards the prayer for extension of time, it is quite clear that section 5 of the Limitation Act does not apply to this case, for the period is fixed not under the

*Application in Second Appeal No. 200 of 1928, for leave to appeal under the Letters Patent and for extension of time.

(1) (1913) I.L.R., 35 All., 227.

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Limitation Act, but by special rules framed by this Court. Under chapter 3, rule 6, of the old rules there was power to extend the time for good cause shown. Under the new rule 6A there is no power to extend the time if 60 days have expired.

The question is whether the old rule or the new rule applies. The new rule, though made earlier, was published in the Gazette of the 3rd of March, 1928. Under section 131 of the Code of Civil Procedure rules made by the High Court have the force of law from the date of publication, or from such other date as may be specified. In the present case no date was specially specified. The present appeal was filed after the new rule came into force. It seems to me that, although the right of appeal is a substantive right, no one has a vested right in a period of limitation. It cannot be said that there is any substantive right in an appellant to wait for a particular period of time before filing the appeal. Rules of limitation are *primâ facie* rules of procedure, and unless there is something special in the rules which justified a contrary inference, the rules applicable to an application or appeal would be rules which are in force at the time when the appeal or the application is filed. It has been held in numerous cases that a Statute of limitation is retrospective in its operation and governs all proceedings from the moment of its enactment, even though the cause of action might have accrued before the Act came into existence: *Soni Ram v. Kanhaiya Lal* (1).

Although this was a case in which I might have granted leave if I had the power to extend the period, I reject the application because it is admittedly beyond time.

(1) (1913) I.L.R., 35 All., 227.