

## APPELLATE CIVIL

*Before Mr. Kendall, Acting Chief Justice, and Mr. Justice Bajpai*

GAEKWAR BARODA STATE RAILWAY (DEFENDANT) *v.*

MUHAMMAD HABIB-ULLAH AND OTHERS (PLAINTIFFS)\*

1934  
December, 3

*Limitation Act (IX of 1908), section 12(2)—Application for leave to appeal to Privy Council—Time requisite for obtaining copy of decree—Copies of judgment and decree applied for but copy of decree not filed—Exclusion of time for copy.*

An application for leave to appeal to the Privy Council was made on 6th April, 1934. The decree sought to be appealed from was dated 22nd December, 1933; an application for copies of the judgment and the decree was made on 22nd January, 1934; the copy of the judgment was obtained on 10th March, 1934, but the copy of the decree was not ready until 20th April, 1934, after the application for leave had been filed: *Held*, that the wording of sub-section (2) of section 12 of the Limitation Act was quite sufficient to enable the applicant to exclude the time from the date when the application for copies was made until the date when the copy of the decree was ready. The circumstance that apparently the copy of the decree was in this case not requisite for preparing and filing the application for leave to appeal, and the copy of the judgment alone was apparently found to be sufficient for the purpose, did not affect the provisions of section 12(2). At all events the period between the 22nd January and the 10th March, when the copy of the judgment was obtained, must be excluded, and even if only this lesser period were to be excluded, the application for leave would be within limitation.

Messrs. *P. L. Banerji* and *K. D. Malaviya*, for the applicant.

Mr. *M. L. Chaturvedi*, for the opposite party.

KENDALL, A.C.J., and BAJPAI, J.:—This is an application for leave to appeal to His Majesty in Council, which has been opposed on the ground that it is barred by limitation. The decree against which the appeal has been made was dated the 22nd December, 1933, and the present application is dated the 6th April, 1934. The report of the office on it

\*Application No. 10 of 1934, for leave to appeal to His Majesty in Council.

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is that it is fifteen days beyond time. Mr. *P. L. Banerji*, for the appellant, relies on the provisions of sub-section (2), section 12 of the Limitation Act, and points to the fact that the period between the 22nd January, 1934, when he applied for a copy of the decree, until the 20th April, 1934, when the copy of the decree was ready, should be excluded in computing the period of limitation.

Under sub-section (2) of section 12 of the Limitation Act, "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"; and their Lordships of the Privy Council in the case of *Jijibhoy N. Surty v. T. S. Chettyar* (1) have remarked: "Section 12 makes no reference to the Code of Civil Procedure or to any other Act. It does not say why the time is to be excluded, but simply enacts it as a positive direction."

The application is opposed on the ground that this period cannot be excluded because the time was not requisite for obtaining a copy of the decree. The reason given for this argument is that in this case a copy of the decree was not requisite, and that this is shown by the fact that the application for leave to appeal was filed on the 6th April, whereas the copy of the decree was not obtained until the 20th April. It is pointed out that in the Privy Council judgment to which we have referred their Lordships have remarked: "If indeed it could be shown that in some particular class of cases there could be no object in obtaining the two documents, an argument might be offered that no time could be requisite for obtaining something not requisite." As the dates given above show that the application for leave to appeal was filed before the copy

(1) (19-8) 26 A.L.J., 657 (661).

was supplied, it is argued that the copy of the decree was not requisite, and that the time cannot be excluded.

The paragraph in which the remarks relied on by the respondent occur sets forth an argument that might be used in a particular class of cases, and their Lordships proceed to demolish it so far at any rate as the particular case before them is concerned. Mr. *Chaturvedi*, for the respondent, however, has tried to show that the present case is one in which the circumstances are peculiar and that as a matter of fact the copy of the decree was not requisite. The circumstances, as we have been shown from the record, are that on the 22nd January the appellant applied for a copy both of the decree and the judgment. The copy of the judgment was obtained on the 10th March, and, as it happened, that provided sufficient material for the completion of the application for leave to appeal. When the application for both copies was made, however, the appellant was actually in need of the information which had to be provided by either the copy of the decree or the copy of the judgment, and therefore, it is impossible to say that on the date when the application for copies was made either of those copies was not requisite. It was only an accident, so to speak, that the necessary information was supplied by the copy of the judgment and not by the copy of the decree. It has been argued by Mr. *Chaturvedi* that as the information was actually supplied by the copy of the judgment, the copy of the decree cannot have been necessary. However true this may be of the period after the 10th March, when the copy of the judgment had been obtained, it has no application to the period from the 22nd January to the 10th March. Even if this lesser period were to be excluded, the application would be within time. We are, however, of opinion that the wording of sub-clause (2) of section 12 is quite sufficient to enable the appellant to exclude the whole of the time from the date when the application was

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made until the date when the copy of the decree was ready.

As this point might be taken in appeal, we direct that copies of both the judgment and the decree be filed. For the reasons given above we hold that the application is within time. The valuation of the suit in the court below being above Rs.10,000 and the valuation of the proposed appeal to His Majesty in Council being also above Rs.10,000, and the courts in India having differed, the case satisfies the requirements of law under section 110 of the Civil Procedure Code, and we certify accordingly.

## REVISIONAL CIVIL

*Before Mr Justice Rachhpal Singh*

1934  
December, 4

WAHID HASAN AND OTHERS (APPLICANTS) v. ABDUL RAHMAN AND OTHERS (OPPOSITE PARTIES)\*

*Mussalman Wakf Act (XLII of 1923), section 10—Existence of wakf denied by defendant—No power to investigate into question of existence or otherwise of a wakf—Jurisdiction.*

An application was made to a District Judge to take action under section 10 of the Mussalman Wakf Act, XLII of 1923, against certain persons, alleged to be mutwallis of certain wakf properties, for having failed to file accounts, etc., required by the Act. In reply these persons denied the existence of any wakf relating to the properties:

*Held*, there is nothing in the Mussalman Wakf Act of 1923 to show that any power has been conferred on the court to go into the question as to whether or not the properties, about which an application is made, are wakf properties. The Act is applicable only to those cases in which the existence of the wakf is admitted. It does not confer jurisdiction on the court to determine the question as to the existence of a wakf; so, if at the outset the existence of a wakf is denied, the court has no jurisdiction to proceed with the case any further.

Mr. M. Mahmudullah, for the applicants.

Messrs. Haider Mehdi and S. N. Sahai, for the opposite parties.