

## APPELLATE CIVIL.

Before Mr. Justice Bisheshwar Nath Sricastava.

1930

FAQIR BUX (PLAINTIFF-APPELLANT) v. BILESHWAR AND OTHERS (DEFENDANTS-RESPONDENTS).\*

April, 25.

*Limitation Act (IX of 1908), section 12, clause (2)—Period intervening between the date of judgment and the date of signing the decree, whether "time requisite for obtaining copy of decree" within the meaning of section 12 of the Limitation Act.*

Held, that the period intervening between the date of the judgment and the date of the signing of the decree cannot be regarded as "time requisite for obtaining a copy of the decree" within the meaning of section 12, clause 2 of the Limitation Act. If the application for copy is made before the preparation of the decree, the time subsequent to the date of the application would be treated as "time requisite for obtaining a copy" within the meaning of section 12, but in the absence of any such application it would be straining too much the language of the section to hold that the period intervening between the pronouncing of the judgment and signing of the decree is period requisite for obtaining a copy of the decree. *Raja Muhammad Mehdi Aji Khan v. Lal Bahadur Singh* (1) relied on. *Bani Madhub Mitter v. Matungini Dassi* (2) distinguished. *Parbati v. Bholá* (3), *Pramatha Nath Roy v. Lee* (4), and *J. N. Surty v. T. S. Chettyar* (5) referred to.

Mr. Ali Muhammad, for the appellant.

SRIVASTAVA, J. :—These are two appeals against a decision of the Additional Subordinate Judge of Unao. The learned Additional Subordinate Judge pronounced the judgment which has given rise to these appeals on the 17th of December, 1929. In accordance with order XX, rule 7 of the Code of Civil Procedure, the decree prepared in the lower appellate court bears the same date

\*Second Civil Appeal No. 88 of 1930, against the decree of Babu Sitta Sahai, Additional Subordinate Judge of Unao, dated the 17th of December, 1929, reversing the decree of Babu Gulab Chand Srimal, Munsif of Purwa at Unao, dated the 14th of December, 1928.

(1) (1925) 12 O.L.J., 444.

(2) (1986) I.L.R., 13 Cal., 104.

(3) (1889) I.L.R., 12 All., 79.

(4) (1922) I.L.R., 49 Cal., 999.

(5) (1928) 5 O.W.N., 479.

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on which the judgment was pronounced. But it appears that as a matter of fact the decree was signed by the Additional Subordinate Judge on the 2nd of January, 1930. Applications for copies of the judgment and decree were made by the appellants on the 7th of January, 1930. The copies were ready on the 11th of January and were delivered to the applicants on the 13th of January, 1930. The present appeals were filed on the 5th of April, 1930. It has been reported by the office that the appeals are beyond time by fourteen days.

The contention urged on behalf of the appellants is that the period intervening between the date of the judgment and the date of the signing of the decree should be regarded as "time requisite for obtaining a copy of the decree" within the meaning of section 12, clause 2 of the Limitation Act (IX of 1908). It has been frankly conceded by the learned counsel for the appellants that the practice which has hitherto prevailed in Oudh is against his contention. In *Raja Muhammad Mehdi Ali Khan v. Lal Bahadur Singh* (1), Mr. DALAL, J. C. (now Sir BARJOR DALAL), held that in computing the period of limitation under section 12(2) of the Limitation Act there was no such practice prevailing in Oudh or in the sister province of Allahabad as would exclude the time between the date of the judgment and the preparation of the decree. The learned Judge distinguished the decision of the Calcutta High Court in *Bani Madhub Mitter v. Matungini Dassi* (2), on the ground that the practice prevailing in the Calcutta High Court appeared to be different. Reliance was placed before me upon the following observations of Sir JOHN EDGE, C. J., in *Parbati v. Bhola* (3):—

"In my opinion, applying section 12 of the Limitation Act to such a case, allowance should be made for the time between the date when a judgment was pronounced and

(1) (1925) 12 O.L.J., 444.

(2) (1886) I.L.R., 13 Cal., 104.

(3) (1889) I.L.R., 12 All., 79 (81).

the date when the decree was signed if the delay in signing the decree delayed the applicant in obtaining a copy of the decree, and not otherwise. In such a case as that it would clearly be, within the meaning of section 12, time which was requisite for obtaining a copy of the decree, because a copy of the decree could not be obtained until the decree was signed by the Judge."

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With all respect to the learned Judge, I feel very doubtful whether any time preceding the making of an application for a copy can be regarded as "time requisite for obtaining a copy of the decree" even though the decree may not have been signed by the Judge. In *Pramatha Nath Roy v. Lee* (1) it was held by their Lordships of the Judicial Committee that time which need not have elapsed if the appellant had taken reasonable and proper steps to obtain a copy of the decree or order could not be regarded as "requisite" time within sub-section (2) of section 12 of the Indian Limitation Act. In *J. N. Surty v. T. S. Chettyar* (2) Lord PHILLIMORE delivering the judgment of their Lordships of the Judicial Committee observed as follows:—

"The word 'requisite' is a strong word; it may be regarded as meaning something more than the word 'required'. It means 'properly required' and it throws upon the pleader or counsel for the appellant the necessity of showing that no part of the delay beyond the prescribed period is due to his default."

In the present case, as pointed out before, no application for copies was made until the 7th of January, 1930.

(1) (1922) I.L.R., 49 Cal., 999 (P. C.). (2) (1928) 5 O.W.N., 479.

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There is nothing to suggest that the applicants were prevented from making their application earlier by reason of the decree not having been signed. If they had made the application earlier, there is no doubt that the time subsequent to the date of the application would have been treated as "time requisite for obtaining a copy" within the meaning of section 12. In the absence of any such application it seems to me that we would be straining too much the language of the section if we hold the period intervening between the pronouncing of the judgment and signing of the decree as period requisite for obtaining a copy of the decree. I can therefore see no reason to make a departure in this case from the practice which has prevailed for so long in this province and must overrule the appellants' contention.

The learned counsel for the appellants also suggested that he might be allowed extension of time under section 5 of the Limitation Act. It is enough to say that the applicants actually obtained the copies on the 13th of January, 1930. They did not file their appeals until about three months later on the 5th of April, 1930. There is no explanation forthcoming why they waited so long before filing their appeals. I must, therefore, reject this contention also.

The result, therefore, is that these appeals must be held to be barred by time. They are dismissed accordingly.

*Appeals dismissed.*