

## MISCELLANEOUS CIVIL

Before Mr. Justice Bisheshwar Nath Srivastava, Chief Judge  
and Mr. Justice G. H. Thomas

FIRM ANANT RAM MANGAT RAM (DEFENDANT-APPELLANT) v. FIRM RAM SAROOP AND SUKHDEO PRASAD (PLAINTIFF-RESPONDENT)\*

1937  
May, 7

*Limitation Act (X of 1908), Article 168—Appeal dismissed for want of prosecution—Application for readmission of appeal—Article 168, whether would apply to an application for re-admission under section 151, Civil Procedure Code.*

An application for re-admission of an appeal dismissed for want of prosecution cannot escape the application of Article 168 of the Limitation Act even if such an application could lie under section 151 of the Code of Civil Procedure. *Sonu Bai v. Shivaji Rao* (1), dissented from. *Krishnasamy Naidu v. Chengalraya* (2), and *Bissa Mal v. Kesar Singh* (3), relied on.

Mr. *Iftikhar Husain*, for the appellant.

Messrs. *P. N. Chaudhri and Siraj Husain*, for the respondent.

SRIVASTAVA, C. J. and THOMAS, J.:—This is an appeal under order XLIII, rule 1(t) of the Code of Civil Procedure against an order of the learned Civil Judge of Rae Bareilly made under order XLI, rule 19 of the Code of Civil Procedure refusing to re-admit an appeal dismissed for default. The appeal was dismissed for default of appellant on 4th April, 1936. An application purporting to be made under order XLI, rule 19 of the Code of Civil Procedure was made on 18th May, 1936, clearly beyond 30 days of the order of dismissal. The learned Civil Judge dismissed the application on the ground of its being barred by limitation under Article 168 of the Indian Limitation Act.

\*Miscellaneous Appeal No. 71 of 1936, against the order of Babu Gulab Chandri Srimal, Civil Judge of Rae Bareilly, dated the 12th of September, 1936.

(1) (1920) I.L.R., 45 Bom., 648. (2) (1923) I.L.R., 47 Mad., 171.

(3) (1920) I.L.R., 1 Lah., 363.

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It has been contended in appeal that apart from the provisions of order XII, rule 19 of the Code of Civil Procedure the court had inherent jurisdiction to set aside the order of dismissal under section 151 of the Code of Civil Procedure. It has further been argued that as the appellant did not discover that the appeal had been dismissed until after the expiration of 30 days from the date of dismissal he should be allowed to invoke the aid of section 151. The argument proceeded that Article 168 would not apply to the case if the application for readmission is treated as one under section 151 of the Code of Civil Procedure. Reliance has been placed on the decision of the Bombay High Court in *Sonu Bai v. Shivaji Rao* (1). In this case the learned Judges dealing with a preliminary objection about a similar application being barred by limitation under Article 168 of the Indian Limitation Act observed as follows, :

“I am of opinion that the preliminary objection would be good if the powers of the court to re-admit the appeal were confined only to rule 19 of order XII, and I would be bound to give effect to it. But if rule 19 does not exhaust the powers of the court to re-admit an appeal or an application dismissed for default, and if it is open to the court to deal with these applications under section 151 of the Code, and to make an order to that effect for the ends of justice or to prevent abuse of the process of the court, the preliminary objection cannot succeed as the period of limitation will have no application to the exercise of such powers.”

With all respect we cannot agree with the observations quoted above relating to limitation. The learned Judges have given no reasons in support of their opinion. Article 168 is as follows:

“168 For the admis- sion of an appeal dismissed for want of prosecution.	Thirty days	The date of the dismissal.”
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It appears to us that the words used in the first column are quite general and must cover all applications for the readmission of an appeal dismissed for want of prosecution. Assuming that such an application could be made under section 151 we can see nothing in the terms of the article to exclude an application made under section 151 for the readmission of an appeal dismissed for want of prosecution from the operation of the Article. It should be noted that under Article 169 the period of limitation for the rehearing of an appeal heard *ex parte* is 30 days from the date of the decree in appeal or, where notice of the appeal was not duly served, when the applicant has knowledge of the decree. Thus it is clear that whereas in the case of the appellant limitation runs from the date of the dismissal in the case of the respondent limitation may be reckoned from the date of his knowledge of the decree if notice of the appeal was not duly served on him. The object of the appellant is to obtain a benefit which has not been allowed to the appellant but has been allowed only to the respondent. We are clearly of opinion that the appellant cannot escape the operation of Article 168 even if the application could lie under section 151 of the Code of Civil Procedure. We are supported in this view by the decisions of the Madras High Court in *Krishnasamy Naidu v. Chengalraya* (1) and of the Lahore High Court in *Bissa Mal v. Kesar Singh* (2). In both these cases it was held that a person in the position of the appellant could not be allowed to evade the provisions of Article 168 of the Limitation Act. It was further held that the provisions of order XLI, rules 17 and 19 are exhaustive in respect of dismissal for default of appearance in appeals and the setting aside of such dismissal and that the court cannot act in such cases under section 151 of the Code of Civil Procedure or otherwise under its inherent powers. In the view

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(1) (1923) I.L.R., 47 Mad., 171. (2) (1920) I.L.R., 1 Lah., 869.

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which we have taken of the question of limitation it is unnecessary for us to commit ourselves definitely in the present case to the proposition that section 151 has no application to such cases. We accordingly agree with the lower court's opinion that the appellant's application was barred by limitation and dismiss the appeal with costs.

*Appeal dismissed.*

## APPELLATE CIVIL

*Before Mr. Justice Ziaul Hasan and Mr. Justice H. G. Smith*

1937  
May, 8

LALA GIRDHARI LAL (PLAINTIFF-APPELLANT) v. LALA GOBARDHAN DASS (DEFENDANT-RESPONDENT)\*

*Civil Procedure Code (Act V of 1908), Schedule II, paragraph 17(4)—“Sufficient cause”, meaning of—Agreement to refer to arbitration—Circumstances show that arbitrators cannot command confidence of one party—Party, if should be compelled to submit to their arbitration.*

The words “sufficient cause” occurring in paragraph 17(4) of the Second Schedule of the Code of Civil Procedure cover all the grounds of justice, equity and good conscience on which a court thinks an agreement should not be ordered to be filed and are not to be confined to grounds such as are mentioned in paragraph 14 of the same schedule.

Where the circumstances of the case show that even if the arbitrators mentioned in the agreement to refer to arbitration be not partial to the plaintiff, they cannot command the confidence of the defendant, it would be wholly inequitable to compel the defendant to submit himself to their arbitration. *Makhan Lal Lachmi Narain v. Abhai Ram Chuni Lal (1)*, and *Ghulam Mohamed Khan v. Gopaldas Lalsingh (2)*, referred to.

Messrs. *K. N. Katju, Bhagwati Nath Srivastava* and *Nazir Uddin*, for the appellant.

\*Miscellaneous Appeal No. 64 of 1935, against the decree of Babu Sheo Gopal Mathur, 1st Additional Judge, Small Cause Court, Lucknow, acting as Civil Judge of Lucknow, dated the 3rd of October, 1935.

(1) (1935) A.L.J., 998.

(2) (1932) 143 I.C., 635.