

presumed that the Court which admitted the applications and ordered the issue of notice was satisfied that the conditions requisite for the issue of notice were present, namely, that the Court saw good reason to think that the decree was contrary to law or to some usage having the force of law. It is not open to the respondents at the present stage to argue that there was no question of law involved in the case. These applications must therefore be granted and the applicant is allowed to appeal in forma pauperis.

MACPHERSON, J.—I agree. At the same time I think that agents who present applications to appeal in forma pauperis should ordinarily produce at the time of presentation something to show that they are in fact authorised.

1928.

MUSSAMMAT

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v.

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SAHAY, J.

APPELLATE CIVIL.

Before Kulwant Sahay and Macpherson, JJ.

MUSSAMMAT CHANDER KALA KUER

v.

MUSSAMMAT DULHIN RAJA KUER.*

1928.

May, 10.

Civil Procedure Code, 1908 (Act V of 1908), Order XLI, rule 22—cross-objection, application to file in forma pauperis—limitation. The limitation of one month provided for an application to file a memorandum of appeal in forma pauperis does not apply to an application for leave to file a memorandum of cross-objection in forma pauperis, which can be admitted at any time under Order XLI, rule 22, Code of Civil Procedure, 1908.

Gobinda Rani Dasi v. Radha Ballabh Das, (1) followed.

Where notice of an application for leave to file a cross-objection in forma pauperis has been issued it is no longer open to the opposite party to resist the application on the ground that there is no substantial question of law involved.

*Pauper Application no. 1 of 1928.

(1) (1910) 12 Cal. L. J. 173.

1928.

Application by the respondent.

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CHANDER

KALA

KUER.

v.

MUSSAMMAT

DULHIN

RAJA

KUER.

KULWANT

SAHAY, J.

The facts of the case material to this report are stated in the judgment of Kulwant Sahay, J.

Ahmed Raza, for the applicant.

Siveshwar Dayal, for the respondent.

KULWANT SAHAY, J.—This is an application for leave to file a memorandum of cross-objections in forma pauperis. The application was heard and notice was ordered to be issued. The Government Pleader does not appear and oppose the application. The appellant appears and raises two objections: first, that the memorandum of cross-objections ought to have been filed within 30 days of the date of the decree and, second, that there is no substantial question of law as required under the proviso to Order XLIV, rule 1 of the Code.

As regards the first point, it is only necessary to refer to the provisions of Order XLI, rule 22, clause (5), which provides that the provisions relating to pauper appeals shall so far as they can be made applicable apply to an objection under this rule. Now, an objection under this rule can be filed by the respondent after service of notice of the appeal. The time for filing an appeal to the High Court is 90 days, and if the respondent is entitled to present a memorandum of cross-objection in forma pauperis he cannot be expected to present the same within 30 days of the decree. The law allows a cross-objection to be filed within 30 days of the service of the notice of the appeal and by the provisions of clause (5) of Order XLI, rule 22, a cross-objection can be filed in forma pauperis. It is, therefore, clear that the limitation of 30 days from the date of the decree does not apply to applications for leave to file cross-objections in forma pauperis. This question was considered by the Calcutta High Court in *Gobinda Rani Dasi v. Radha Ballabh Das* (1), where it was held that an application for leave to present a memorandum of

cross-objection under section 561 of the Code of Civil Procedure of 1882 as also the corresponding provisions of the Code of 1908 may be received by the Court at any time. The first objection of the learned Advocate for the appellant has, therefore, no substance.

As regards the second objection, the notice of the application having been ordered to be issued, it must be presumed that the Court was satisfied before ordering the issue of the notice that the requirements of the law under the proviso to Order XLIV, rule 1, were satisfied. Moreover, it appears that notice of the application was given to the learned Advocate for the appellant at the time it was presented and it was open to him to appear and object at that time. He, however, did not appear and raise any objection. It is not open to him now to say that the requirements of the proviso to Order XLIV, rule 1, have not been complied with.

The application is granted, and the petitioner is allowed leave to file the memorandum of cross-objections in forma pauperis.

MACPHERSON, J.—I agree

APPELLATE CIVIL.

Before Kulwant Sahay and Macpherson, JJ.

GANGA SINGH

v.

SHEO PRASAD.*

1928.

May 11.

Execution of Decree—Part payment—time extended for payment of balance—limitation—Limitation Act, 1908 (Act IX of 1908), section 15—application for transfer of decree within three years. Where a judgment-debtor paid a part of the decretal amount and asked for time to pay the balance, and the court granted time, held, that, between the date of

*Miscellaneous Appeal no. 174 of 1927, from an order of M. S. Hasan, Subordinate Judge of Muzaffarpur, dated the 20th June, 1927, reversing an order of Babu Sachindra Nath Ganguli, Munsif of Hajipur, dated the 24th January, 1927.