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JAGANNATH DAS v. CHAMU RAGHUNATH KHUNTIA.

application for execution made after the decree sought to be executed had become barred by limitation cannot be entertained, and the view taken by the Courts below was correct.

This appeal is dismissed with costs.

MACPHERSON, J.—I agree.

S. A. K.

Appeal dismissed.

REVISIONAL CRIMINAL.

Before Macpherson and Kulwant Sahay, JJ.

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Dec., 7.

KELU PATRA

v.

ISWAR PARIDA.*

Criminal Revisional Jurisdiction—Limitation—application after sixty days—High Court, practice of, not to interfere—absence of exceptional circumstances—Sessions Judge, proceedings before—period, whether excluded—reasonable time, petitioner must come within.

The High Court, as a general practice, will not entertain, in the absence of the most exceptional circumstances, an application in its criminal revisional jurisdiction after the expiry of 60 days from the date of the decision or order impugned. A fresh period of sixty days does not accrue from the date when the Sessions Judge refuses to make a reference under section 438, Code of Criminal Procedure, 1898.

The period of 60 days is intended to cover also proceedings of normal length before the Sessions Judge, and it will not, ordinarily, be extended because the petitioner negligently or deliberately delayed to move the Sessions Judge till the period had nearly expired, nor, in any case, beyond the period occupied in the Session Court. In all cases the petitioner must come to the High Court within a reasonable time of the order of the Sessions Judge, and ought to do so expeditiously.

**Circuit Court, Cuttack.* Criminal Revision no. 48 of 1928, from an order of Babu B. K. Adhikary, Deputy Magistrate of Puri, dated the 4th May, 1928, an application against which was dismissed by H. R. Meredith, Esq., I.C.S., Sessions Judge of Cuttack, by his order dated the 6th July, 1928.

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The facts of the case material to this report are stated in the order of Macpherson, J.

B. K. Ray, for the petitioners.

S. N. Sen Gupta, for the opposite party.

MACPHERSON, J.

MACPHERSON, J.—The applicants constituted the first party in a proceeding under section 145 of the Code of Criminal Procedure before the Deputy Magistrate of Puri who decided the second party Iswar Parida and others to be in possession of the land to which the proceeding related. The date of his decision is the 4th May, 1928. The application to this Court to exercise its powers of revision was filed on the 19th November, or more than six months later. The learned Registrar appears to have admitted the application and issued the usual notices with the object of securing for himself, for Sessions Judges and for the Bar the guidance of the Court on the question of the time limit for applications in revision.

It is the practice of this Court not to entertain, save under the most exceptional circumstances, an application in revision after the expiry of sixty days from the date of the decision or order impugned. Where the Court is moved after the expiry of that period the question is whether there exist such very exceptional circumstances in the particular case as to induce the Court to depart from its usual practice—in the present instance to depart from it so far as to consider an application made after the expiry of more than three times the disqualifying delay.

On behalf of the petitioners it is submitted that the application is not stale as they moved the Sessions Judge of Cuttack on the 6th July, 1928, against the order assailed and that they come within about sixty days from the rejection of that motion if the High Court vacation, which lasted from the 17th August to the 30th October, is excluded.

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The submission is entirely untenable. In the first place the application to the Sessions Judge to refer the matter to the High Court was not made until the sixty-third day after the decision, and so the application was beyond time and would in all probability have been rejected on that ground by this Court unless exceptional circumstances (which are not shown) were made out. In the next place it is a complete misapprehension that when an application is made to the Sessions Judge beyond or even within the period of sixty days from the decision impugned a further period of sixty days becomes available to the applicant from the date when the Sessions Judge refuses to make a reference under section 438. The period of sixty days is intended to cover the proceedings of normal length before the Sessions Judge, and ordinarily will not be extended because the petitioner negligently or deliberately delayed to move the Sessions Judge till the period had nearly expired. Least of all will it be extended when the motion was filed before him and refused on the same day. Where the Sessions Judge has issued notice and there is delay in his Court, each case will be considered on its own circumstances. But it is certain that the period of sixty days will not be extended by the period occupied in proceeding in this Court. Broadly it is not allowable to delay in approaching the Sessions Judge who in our view ought to be moved within the period of appeal, thirty days at latest and in all cases the petitioner must come to the High Court within a reasonable time of the order of the Sessions Judge, and ought to do so expeditiously.

In the particular instance the delay was unreasonable. Moreover there was a Circuit Court in the second half of July to which application should have been made and that is an important circumstance to be considered. The argument in regard to the High Court vacation is altogether one of despair. The dates given are those of the Civil Court vacation and the High Court was not closed on the Criminal Side

except for about a fortnight during the executive holidays, which commenced three months after the order of the Sessions Judge.

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Thus no explanation is furnished for either of the delays, and the application must fail on account of the first of them, and if it did not, it would emphatically fail by reason of the second.

The rule must therefore be discharged.

We may add that on looking into the merits of the application in view of the special circumstances, we find that there was not only a likelihood of a breach of the peace at the time when the proceeding was drawn up on the 30th November, 1927, but also, as was held by the Magistrate after a further reference to the police for report subsequent to the compromise between the second party and the bhag tenants in direct possession which was evidenced by the petition filed on the 11th January, 1928, at the date when he pronounced his decision in May following, and that there are no merits in the application.

KULWANT SAHAY, J.—I agree.

S. A. K.

Application dismissed.

APPELLATE CIVIL.

Before Ross and Chatterji, JJ.

SHIVA SHANKAR PRASAD PANDE

v.

KALI OJHA.*

1928.

Dec., 10.

Non-occupancy rights, whether can be acquired in zerat lands—lease for a term of years or from year to year—Bengal Tenancy Act, 1885 (*Act VIII of* 1885), *section* 116.

*Appeal from Appellate Decree no. 1180 of 1926, from a decision of Rai Bahadur J. Chatterji, District Judge of Shahabad, dated the 24th of May, 1926, modifying a decision of M. Shah Muhammad Khalilur Rahman, Munsif of Arrah, dated the 1st of May, 1926.