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MACPHERSON, J.

his attention being drawn to it, the Collector will have the replies furnished by a reliable officer who understands the difference between a kist of the "engagement" (doul or kabuliat) and the kist date in the sense of the Board of Revenue's latest date of payment under section 3 of "an arrear of revenue", as *defined* in section 2 for the peremptory purposes of the Act [that is to say, of any part of a kist or kists of the "engagement" which was unpaid (and so already an arrear in the ordinary sense) on the first day of the month following the month of the era in respect of which the kist was fixed], to save the estate from summary sale.

The appellant is entitled to his costs up to this stage. Future costs will be in the discretion of the court below.

KHAJA MOHAMAD NOOR, J.—I agree.

Appeal allowed.

Case remanded.

FULL BENCH.

Before Courtney Terrell, C.J., Wort, Macpherson, Khaja Mohamad Noor, Dhavle, Agarwala and Varma, JJ.

GABRIEL CHRISTIAN

v.

CHANDRA MOHAN MISSIR.*

1935.

November, 18, 19, 22.

Limitation Act, 1908 (Act IX of 1908), section 12—"time requisite", meaning of—time taken in preparation of decree, when should be allowed.

No period which may be under the control of the appellant between the date upon which judgment is pronounced (which is the date of the decree under the Civil Procedure Code) and the date on which the appeal was filed can be

* Appeal from Appellate Decree no. 1216 of 1932, from a decision of Babu Kshetra Nath Singh, Special Subordinate Judge of Ranchi, dated the 20th May, 1932, confirming a decision of Babu Nirmal Chandra Ghosh, Munsif of Ranchi, dated the 6th December, 1930.

considered as the time requisite within the meaning of section 12. In most cases the decree of the trial court follows upon the judgment without the parties being required to do anything in the interval; and in such cases the appellant will be entitled to the exclusion of the time between the judgment and the decree. In exceptional cases, such (for instance) as cases of partition and mesne profits, the drawing up of the final decree may depend upon the filing of the necessary stamp paper or court-fees; in such cases the exclusion of time in favour of the party who is to file the court-fees will depend upon the circumstances, but other parties to whom no responsibility attaches for the delay will be entitled to exclude the time.

Where, therefore, the judgment of the trial court was pronounced on the 6th December, 1930, but the decree was not signed until the 13th of December, and on the 10th of December the appellant applied for a copy of the judgment and decree and the copy was not ready for delivery until the 15th of December and the appeal was filed on the 13th of January, 1931 (12th of January being a Sunday).

Held, that the period between the 6th of December, the date of the delivery of the judgment and the 15th of December, the date upon which the copy of the decree was delivered to the appellant, must be excluded in computing the period of limitation, and that, therefore, the appeal filed on the 13th of January was within time.

Surty v. *Chettyar*(1), followed.

Jyotindranath Sarkar v. *The Lodna Colliery Company, Ltd.*(2), overruled *quoad hoc.*

Appeal by defendant no. 1.

The facts of the case material to this report are set out in the following judgment of Dhavle, J.

DHAVLE, J.—I am afraid this matter must be referred to a larger Bench.

The question is one of limitation. The lower appellate Court held that the appeal to that Court was out of time by one day. The judgment of the trial Court was delivered on the 6th December, 1930, and the decree signed on the 13th of that month. The appellant applied for copies of the judgment and decree on the 10th December,

(1) (1928) I. L. R. 6 Rang. 302; L. R. 55 I. A. 161.
(2) (1921) 6 Pat. L. J. 350, F. B.

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and as the copies were ready for delivery on the 15th December, he was in any view of the matter entitled to deduct this period of six days for the computation of the period of limitation. The appeal to the lower Court was filed on the 13th January, 1931, and if the appellants were not entitled to the deduction of any other time than the six days I have mentioned, the appeal to the lower Court was barred.

It has been contended by Mr. A. B. Mukharji who appears on behalf of the appellant that the matter is concluded by authority and that the view taken by the lower appellate Court is wrong. He cites *Muhammad Moinuddin Ashraf* v. *Moulvi Muhammad Ishaq Ashraf*(1) a decision in which Jwala Prasad and Ross, JJ. held that the principles laid down in the Full Bench decision in *Jyotindranath Sarkar* v. *The Lodna Colliery Company, Ltd.*(2) which dissented from the earlier Full Bench decision in *Ram Asray Singh* v. *Sheonandan Singh*(3), were not applicable to the facts of the case before them on the grounds that the copy of the decree was not obtainable before a certain date and that the appellant had applied for a copy of the decree long before that date and that, therefore, the appellant " was entitled to computation of the period of limitation from the date of the signing of the decree ". If this be the correct view, there seems little point in the legislature providing in Order XX, rule 7, of the Code of Civil Procedure that the decree shall bear date the day on which judgment was pronounced and in section 12 sub-section (2), of the Limitation Act that in computing the period of limitation prescribed for an appeal, the time requisite for obtaining a copy of the decree appealed from shall be excluded. At the same time, it was clearly laid down in *Jyotindranath Sarkar's* case(2) that the time requisite for obtaining a copy of the decree within the meaning of section 12 of the Limitation Act does not begin until the actual application for a copy has been made. The practical difference between the view taken in *Jyotindranath Sarkar's* case(2) and that taken in the case of *Mohammad Moinuddin Ashraf*(1) is that the appellant before me will not or will be entitled to exclude the three days from the 6th December, 1930, to the 10th December, 1930, between the signing of the judgment and the application for copies according as the rule laid down in the Full Bench decision is followed or the view taken in the case of *Muhammad Moinuddin Ashraf*(1) is adopted.

Mr. De who appears for the respondents has drawn my attention to *Mahadeo Prasad Sahu* v. *Gajadhar Prasad Sahu*(4). That is the case mentioned by Dawson Miller, C.J., in his order of reference to Full Court in *Jyotindranath Sarkar's*(2) case and is very much in support of his contention that an appellant applying for copies is not entitled to exclude the period between the signing of the judgment and the application for copies, whether or not the decree has been signed by the time the application for copies is made. The contrary view was taken in *Beni Madhub Mitter* v. *Matungini Dassi*(5). But in recent

(1) (1923) A. I. R. (Pat.) 529.
(2) (1921) 6 Pat. L. J. 350, F. B.
(3) (1916) 1 Pat. L. J. 573, F. B.
(4) (1920) 1 Pat. L. T. 262.
(5) (1886) I. L. R. 13 Cal. 104, F. B.

cases, as was pointed out in *Jyotindranath Sarkar's*(1) case, the Calcutta High Court seems to have been inclined not to regard the period indicated as requisite for obtaining a copy [see *Harish Chandra Tewary* v. *Chandpur Company, Ltd.*(2) quoted by Dawson Miller, C.J., in his order of reference in *Jyotindranath Sarkar* v. *The Lodna Colliery Company, Ltd.*(1) and *Nibaran Chandra Dutt* v. *Martin and Company*(3) cited by Mr. De for the respondents.]

It will, on the whole, cost the parties less if I refer a point of this kind to a larger Bench, when I am apparently face to face with a conflict between the Full Bench decision and the decision of a Bench of two Judges. Ordered accordingly.

The appeal then came up before Terrell, C.J., Dhavle and Agarwala, JJ. who referred it to a larger Bench by the following judgment :—

" This case raises the question whether the decision of the Full Bench of this court consisting of five judge in *Jyotindranath Sarkar* v. *The Lodna Colliery Company, Ltd.*(1) is any longer good law in view of the decisions of the Privy Council in *Pramath Nath Roy* v. *Lee*(4) and *J. N. Surty* v. *Chettyar*(5) as explained in *Secretary of State for India in Council* v. *Parijat Debee*(6).

We are of opinion that this case should be heard by a larger Bench.

On this reference

A. B. Mukherji (with him *U. N. Banerji*), for the appellant :—The object of section 12 of the Limitation Act is to exclude all that time over which the appellant had no control provided that his dilatoriness in taking steps is not responsible for the time spent. " Requisite " means " properly required " and not due to any fault or laches of the appellant. In *Beni Madhab Mitter* v. *Matungini Dassi*(7) the application for copy was made after the signing of the decree. It was held that inasmuch as the appellant was not guilty of any laches, he was entitled to an exclusion of the whole period from the date of the judgment to the date when the copy was ready. In *Parbati* v. *Bhola*(8) the decree was signed

(1) (1921) 6 Pat. L. J. 350, F. B.
(2) (1912) I. L. R. 39 Cal. 766.
(3) (1920) 32 Cal. L. J. 127.
(4) (1922) I. L. R. 49 Cal. 999, P. C.
(5) (1928) I. L. R. 6 Rang. 302; L. R. 55 I. A. 161.
(6) (1932) I. L. R. 59 Cal. 1215, F. B.
(7) (1886) I. L. R. 13 Cal. 104, F. B.
(8) (1889) I. L. R. 12 All. 79.

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on the 1st April and the appellant applied for a copy on the 15th April. Sir John Edge, delivering the judgment observed: "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 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". No deduction was, however, allowed as the appellant was guilty of laches and had not applied for a copy until after the decree had been signed. This is not the case here. In *Bechi* v. *Ahsanullah Khan*(1), Sir John Edge affirmed his view expressed in the earlier decision; and Mahmood, J. took the view that the period before the making of an application for a copy could not be excluded. He observed that he was not differing from the learned Chief Justice but in fact he did differ. The distinction sought to be drawn in *Bechi* v. *Ahsanullah Khan*(1) is unwarranted. The learned Judge considered the meaning of "obtaining" but failed to appreciate the significance of "requisite". The interpretation put on the word "requisite" in the case of *Debi Charan Lal* v. *Sheikh Mehdi Hussain*(2) is correct. The case of *Ramasray Singh* v. *Sheonandan Singh*(3) has been rightly decided, as it received the fullest support from the decision of their Lordships of the Judicial Committee in *J. N. Surty* v. *T. S. Chettyar*(4). I lay stress on the following observations of their Lordships: "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".

(1) (1890) I. L. R. 12 All. 461, F. B.
(2) (1916) 1 Pat. L. J. 485.
(3) (1916) 1 Pat. L. J. 573, F. B.
(4) (1928) I. L. R. 6 Rang. 302; L. R. 55 I. A. 161.

In *Pramath Nath Roy* v. *Lee*(1) the appellant could not get the benefit of exclusion of the whole period as the order was not drawn up on account of the appellants' failure to apply for the drawing up of the order. This case has therefore been distinguished in the Full Bench case of *The Secretary of State for India* v. *Parijat Debee*(2) which follows *Beni Madhab Mitter* v. *Matungini Dassi*(3), and explains *J. N. Surty* v. *T. S. Chettyar*(4). I, therefore, submit that the right of the appellant to a deduction does not depend upon his making an application for copy, if at the time of the application there would have been nothing to be copied. As Rankin, C.J. observed in the referring judgment in *Secretary of State for India* v. *Parijat Debee*(2), "the fact that the decree was not in existence and could not therefore be copied entitles the appellant to deduction of the time which elapsed before the decree was completed..... There is no rule which disentitles an appellant to exclude time which elapses between the making and the drawing up of an order by reason merely of the fact that his application for a copy was not filed prior to the drawing up".

In this view of the matter, I submit the case of *Jyotindranath Sarkar* v. *The Lodna Colliery Company, Ltd.*(5) was not rightly decided. In any case it is no more good law after the pronouncement of their Lordships of the Judicial Committee in *J. N. Surty* v. *T. S. Chettyar*(4) which is the last word on the subject.

Reference was also made to *Siyadatunnissa* v. *Muhammad Mahmud*(6), *Saminatha Ayyar* v. *Venkatasubba Ayyar*(7), *Mahadeo Prasad Sahu* v. *Gajadhar*

(1) (1922) I. L. R. 49 Cal. 999; 49 I. A. 307.
(2) (1932) I. L. R. 59 Cal. 1215, F. B.
(3) (1886) I. L. R. 13 Cal. 104, F. B.
(4) (1928) I. L. R. 6 Rang. 302; L. R. 55 I. A. 161.
(5) (1921) 6 Pat. L. J. 350, F. B.
(6) (1897) I. L. R. 19 All. 342.
(7) (1903) I. L. R. 27 Mad. 21.

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Prasad Sahu(1) and *Moinuddin Ashraf* v. *Maulavi Muhammad Ishaq Ashraf*(2).

B. C. De (with him *K. K. Bannerji* and *L. K. Chowdhury*), for the respondent:—The word "obtaining" used in section 12 implies some active step taken by the appellant. The appellant contends that "requisite" means "required for the preparation of the decree and the obtaining of the copy". If that be correct, the legislature would have expressly said so; but it is significant that the legislature has chosen to use the word "obtaining" only. The mere fact that some hardship would be done to a particular litigant by reason of some omission on the part of the legislature, is no ground for departing from the general principle applicable to the construction of a statute: *Richards* v. *McBride*(3). When the language is unambiguous we are not called upon to put an equitable construction.

Exclusion begins only when there is an application for copy. How can any time be "requisite" in obtaining a copy when in fact no application is made for "obtaining" it?

[CHIEF JUSTICE.—Does not the judgment of the Judicial Committee, which has allowed a deduction of time prior to the making of an application, exclude your argument?]

The point was not placed before their Lordships.

The basis of the judgment in *Bechi* v. *Ahsanullah Khan*(4) is the fact that no application for copy was made. Sir John Edge in fact agreed with Mahmood, J. In *Siyadatunnissa* v. *Muhammad Mahmud*(5) and *Yamaji* v. *Antaji*(6), the appellant was held entitled to a deduction of time from the date

(1) (1920) I P. L. T. 262, P. C.
(2) (1923) A. I. R. (Pat.) 529.
(3) (1881) 8 Q. B. 119, 122.
(4) (1890) I. L. R. 12 All. 461, F. B.
(5) (1897) I. L. R. 19 All. 342.
(6) (1898) I. L. R. 23 Bom. 442.

of the presentation of the application for copy. In *Saminath Ayyar* v. *Venkatasubba Ayyar*(1) the court closed the very next day after the delivery of the judgment. In that view a deduction of the whole period of the holidays was allowed on the ground that no application for copy could have been made. The Limitation Act was amended in 1908; and if the legislature had thought that the Allahabad and Bombay High Courts had taken a wrong view of the matter, it would have amended section 12 accordingly. Even the Calcutta High Court felt impressed by the reasoning employed in the case of *Bechi* v. *Ahsanullah Khan*(2) [see *Harish Chandra Tewary* v. *Chandpur Company, Ltd.*(3)]. In *Nibaran Chandra Datt* v. *Martin and Company*(4) the High Court refused to allow the deduction and held the appeal to be time-barred. This decision was subsequently affirmed by the Privy Council. In *Pramatha Nath Roy* v. *Lee*(5) their Lordships assumed the correctness of *Beni Madhab's case*(6). No point as to the proper construction of section 12(*2*) bearing on the present point arose. Their Lordships did not allow deduction of time on the ground of laches on the part of the appellant. But the converse proposition does not necessarily follow that where there are no laches, the appellant would be entitled to a deduction of the whole period. In *Surty* v. *Chettyar*(7), the attention of their Lordships was never drawn to the fact that the exclusion of time taken in the preparation of the decree or order was not contemplated by the section. The point never arose and could never have arisen.

[CHIEF JUSTICE.—The construction put upon the word "requisite" by their Lordships necessarily lends support to the view pressed by the appellant.]

(1) (1903) I. L. R. 27 Mad. 21.
(2) (1890) I. L. R. 12 All. 461, F. B.
(3) (1912) I. L. R. 39 Cal. 766.
(4) (1920) 32 Cal. L. J. 127.
(5) (1922) I. L. R. 49 Cal. 999; 49 I. A. 307.
(6) (1886) I. L. R. 13 Cal. 104, F. B.
(7) (1928) I. L. R. 6 Rang. 302; L. R. 55 I. A. 161.

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I submit not.

[DHAVLE, J.—Would the Privy Council have allowed a deduction if no copy had been taken?]

No.

[DHAVLE, J.—Then does not the word "requisite" mean not only "necessary" but "actually taken"?]

Exactly.

[NOOR, J.—"Taken" does not necessarily mean "taken by the applicant". It may also refer to the time "taken" by the office.]

Emphasis is laid on the word "obtaining". The case of *Makunda Ram Krishna* v. *Bisansa Sukhramsa*(1) has considered the Privy Council decision in *J. N. Surty* v. *T. S. Chettyar*(2) and I venture to adopt the reasoning of that judgment as a part of my argument.

In that view of the matter I submit that *Jyotindranath Sarkar* v. *The Lodna Colliery Company, Ltd.*(3) has been correctly decided. The case of *Beni Madhab Mitter* v. *Matungini Dassi*(4) is distinguishable and has not been followed by the other High Courts.

S. A. K. *Cur. adv. vult.*

The judgment of the Court was as follows:—

This appeal has been dismissed as time-barred and the question before us is one of limitation and

(1) (1933) A. I. R. (Nag.) 125.
(2) (1928) I. L. R. 6 Rang. 302; L. R. 55 I. A. 161.
(3) (1921) 6 Pat. L. J. 350, F. B.
(4) (1886) I. L. R. 13 Cal. 104, F. B.

whether the appellant is entitled to an allowance of time under section 12 of the Limitation Act.

The judgment of the trial Court was dated the 6th of December, 1930, the decree was not signed until the 13th of December. Meanwhile on the 10th of December, the appellant applied for a copy of the judgment and decree. The copy was not ready for delivery until the 15th of December and the appeal was filed on the 13th of January. Under Article 152 the time for lodging the appeal is 30 days from the date of the judgment. The last date for filing the appeal was the 11th of January, the 12th of January was on a Sunday and the appeal was filed on the 13th. If the appellant is not entitled to the benefit of Article 12 in respect of the period between judgment and his application for a copy thereof, his appeal is out of time by one day.

The Subordinate Judge allowed the appellant six days from the 10th to the 15th, that is to say, from the date of application for copies until the copies were delivered and declined to allow any period prior to the date of application.

The decision of the Subordinate Judge came on second appeal before one of us Dhavle, J. and the appellant contended that a Full Bench decision of this Court in *Jyotindranath Sarkar* v. *The Lodna Colliery Company, Ltd.*(1) had virtually, though not specifically, been overruled by subsequent decision of the Privy Council. Dhavle, J. directed that the matter be heard before a larger Bench and the case came before the Chief Justice, Dhavle, J. and Agarwala, J. In view of the fact that the Full Bench decision referred to was decided by a Bench of five Judges, it was considered desirable that the case should be reheard before a Full Court.

We have heard the arguments at length and all the authorities have been cited to us. The difference

(1) (1921) 6 Pat. L. J. 350, F. B.

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of opinion has arisen over the construction of the words in section 12, sub-sections (*2*) and (*3*)—" the time requisite for obtaining copy of the decree appealed from "—and the choice is between two alternative constructions depending upon whether (*a*) the proper emphasis is upon the word " requisite " so that the meaning is " the time which would have been necessary in any case " or (*b*) whether the emphasis should be upon the word " obtaining " with the result that the meaning is as though the words were " the time actually employed by the appellant " and hence that no time preceding the application for copies by the appellant can be considered. In our opinion the former of these alternatives is the correct construction and that it is correct is shown by the observations of their Lordships of the Judicial Committee in *Surty* v. *Chettyar*(1). The result is that no period which may be under the control of the appellant between the date upon which judgment is pronounced (which is the date of the decree under the Civil Procedure Code) and the date on which the appeal was filed can be considered as the time requisite within the meaning of section 12. In most cases the decree of the trial court follows upon the judgment without the parties being required to do anything in the interval; and in such cases the appellant will be entitled to the exclusion of the time between the judgment and the decree. In exceptional cases, such (for instance) as cases of partition and mesne profits, the drawing up of the final decree may depend upon the filing of the necessary stamp paper or court-fees; in such cases the exclusion of time in favour of the party who is to file the court-fees will depend upon the circumstances, but other parties to whom no responsibility attaches for the delay will be entitled to exclude the time.

In this case the period between the 6th of December, the date of delivery of the judgment and

(1) (1928) I. L. R. 6 Rang. 302; L. R. 55 I. A. 161.

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the 15th of December, the date upon which the copy of the decree was delivered to the appellant, was not under the control of the appellant and should be excluded in computing the period of limitation and the appeal being filed on the 13th of January which was within the period of limitation thus computed was within time. To the extent that the Full Bench decision in *Jyotindranath Sarkar* v. *The Lodna Colliery Company, Ltd.*(1) decided that the period between the date of judgment and the application for copy of the decree can in no case be excluded it was wrongly decided.

The case will be remitted to the lower Court to be dealt with on the merits. No order will be made as to the costs incurred in the High Court.

Appeal allowed.

Case remanded.

CIVIL REVIEW.

Before Macpherson and James, JJ.

RAI BRINDABAN PRASAD,

v.

RAI BANKU BIHARI MITRA.*

1936.

January, 23.

Code of Civil Procedure, 1908 (Act V of 1908), Order XLVII, rule 1—Review—Takhmina paper, value of in considering amount of produce rent—Landlords' failure to produce Takhmina and other village papers on false pretext—tenant having traced the village papers, whether can apply for review—Bengal Tenancy Act, 1885 (Act VIII of 1885), section 88(2)—damage—suit without reasonable and probable cause.

*Civil Review no. 13 of 1935 and Second Appeal no. 150 of 1932. (Application for review of judgment in Appeal from Appellate Decree no. 150 of 1932.)

(1) (1921) 6 Pat. L. J. 350, F. B.