

MISCELLANEOUS CIVIL.

Before Mr. Justice Harrison and Mr. Justice Zafar Ali.

NEKI AND OTHERS (PLAINTIFFS) Petitioners,

versus

CHHAJJU RAM AND ANOTHER (DEFENDANTS)
Respondents.

1923

June 1.

Civil Miscellaneous No. 522 of 1922.

[Civil Appeal No. 2789 of 1914.]

*Civil Procedure Code, Act V of 1908, Order XLV, rule 2—
petition for leave to appeal to Privy Council held up during pro-
ceedings in review and appeal—Limitation.*

On the 3rd November 1917, an appeal was accepted by a Division Bench of the Punjab Chief Court, and the suit of the plaintiffs was dismissed. An application for leave to appeal to the Privy Council was duly presented by the plaintiffs within time, and on the same day an application for review was made. The application for review was accepted and the judgment passed, on 3rd November 1917, was reversed, and plaintiffs' suit was decreed in full; and on 22nd July 1918, an order was recorded on the application for leave to appeal to the Privy Council to the effect that as the application for review had been accepted there was no necessity to go on with the application. The defendants then appealed to the Privy Council and on the 27th February 1922, their appeal was accepted and the judgments passed on review were set aside as being *ultra vires*, and the decree of the 3rd November 1917, dismissing the suit was restored. The plaintiffs now prayed that their original application for leave to appeal to the Privy Council from the latter order be heard and disposed of.

Held, that the plaintiffs' application for leave was still alive, and had merely been in a state of suspended animation while the review and the consequent appeal to the Privy Council had been *sub judice* and as it had been originally presented in time it could now proceed.

Application for leave to appeal to His Majesty's Privy Council against the judgment of the Chief Court (Scott-Smith and Leslie-Jones JJ.) passed on 3rd November 1917.

SHEO NARAIN and MANOHAR LAL, for Petitioners.

TEK CHAND and G. C. NARANG, for Respondents.

1923

NEKI
v.
CHAJJU RAM.

The judgment of the Court was delivered by—

HARRISON J.—This is an application asking for orders to be passed on a petition for leave to appeal to the Privy Council from a decree, dated the 3rd of November 1917.

The facts are that on that date an appeal was accepted and the suit, as instituted, was dismissed by the order of a Division Bench. An application for leave to appeal to the Privy Council was duly presented within time, and on the same day an application for review was made. This latter application was accepted and eventually the original order, passed on the 3rd of November 1917, was reversed and the suit was decreed in full. From this order passed in review an appeal was presented to the Privy Council urging that the review was not competent and further that on the merits the original order passed by the Division Bench on 3rd November 1917 was correct. On the 27th February 1922 their Lordships of the Privy Council held that the review was not competent, that rule 1 of Order XLVII had been misunderstood and that, therefore, the judgments given by the two Division Benches in 1918 were to be set aside and that of the Bench of the Chief Court which passed the order of the 3rd November 1917 was to be restored "so that the suit will stand dismissed."

Counsel for the respondents contends that this finding or rather the order in Council which followed upon it embodies the original decree passed on the 3rd of November 1917 and, therefore, there can now be no question of appealing to the Privy Council. He also contends that in spite of the fact that their Lordships set aside the whole of the proceedings in review and thereby restored the original order passed by the first Bench, it would have been competent to the present appellants appearing as respondents to ask for an order on the merits reversing that decree and upholding the order passed on review, and this in spite of the fact that there was no appeal before their Lordships from this first decision.

With this view we cannot agree. The order of the Privy Council merely dealt with the competency

of the review-application and the legality of the orders passed. Once it had been held that the review proceedings were had the clock was merely put back and the position, as explained in their Lordships' order, was that the original judgment was restored and the suit stood dismissed. From that judgment or rather from the decree which followed upon it the present petitioner wished to present an appeal. His application was presented within time. We do not agree with the contention that the order of the 22nd July 1918 stating that "the application for review has been accepted, and there is no necessity to go on with the application" is tantamount to an order of dismissal, and we find that this application is still alive and has merely been in a state of suspended animation during this long period. It is not contended that the petitioners had not fulfilled the necessary conditions and were not entitled to the certificate which they sought.

We, therefore, accept the application and direct that the certificate be granted. The costs of the petitioner at this hearing will be paid by the respondents; counsel's fee Rs. 120.

A. R.

Application accepted.

1923

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NERI

v.

CHHAJJU RAM.