

**APPELLATE CIVIL.**

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*Before Broadway and Currie JJ.*

**MUSSAMMAT JAMNA DEVI AND OTHERS**

(PLAINTIFFS) Appellants,

*versus*

**MST. UTMI BAI AND OTHERS (DEFENDANTS)**

Respondents.

**Civil Appeal No. 1967 of 1924.**

*Punjab Courts Act, VI of 1918, section 41 (1), (3)—Second Appeal—on point of custom—Limitation—Time spent during pendency of application for certificate—exclusion of— from period of limitation for appeal—Extension of period—sufficient cause—Indian Limitation Act, IX of 1908, section 5.*

The judgment appealed against (on a point of custom), having been passed on 9th November 1923, the appellants applied for a copy of the judgment and of the decree on the 12th November and obtained the copies on the 16th of the same month. On the 5th December, 1923, an application was filed by them for the grant of a certificate. For some unknown reasons the application was not disposed of till the 22nd April 1924, and the certificate was taken by the appellants on the 29th April 1924. The appeal itself was not, however, filed till the 8th July 1924.

*Held*, that the appellants were entitled to five days spent in obtaining the copies, *i.e.*, from the 12th November to the 16th November 1923, and 140 days from the 5th December, 1923, to the 22nd April, 1924, when the application was granted; but that once the certificate was granted the application for the same ceased to be "pending" within the meaning of section 41 (3) of the Punjab Courts Act, and the remaining period up to the actual issue of the certificate could not be deducted from the period of limitation for the appeal.

*Held further* that, as the delay in filing the appeal, even after obtaining the certificate, was inordinate, *viz.*, from 29th April to 8th July, sufficient cause had not been shewn for extending the period under section 5 of the Limitation Act.

*Second appeal from the decree of H. F. Forbes, Esquire, District Judge, Dera Ghazi Khan, dated the 9th November, 1923, reversing that of Lala Maharaj Kishore, Subordinate Judge, 4th Class, Dera Ghazi Khan, dated the 14th February, 1923, and dismissing the plaintiffs' suit.*

M. L. PURI, for Appellants.

NAWAL KISHORE and DEVI DAYAL, for Respondents.

BROADWAY J.—This second appeal has come up to this Court on a certificate granted by the District Judge, Dera Ghazi Khan, on the 22nd of April, 1924. At the hearing Mr. Nawal Kishore for the respondents raised a preliminary objection to the effect that the appeal was barred by time. It appears that the judgment appealed against was passed on the 9th of November, 1923. The appellants applied for a copy of the judgment and of the decree on the 12th November, 1923, and obtained them on the 16th of the same month.

On the 5th of December, 1923, an application was filed by them for the grant of a certificate. For some unknown reason the application was not disposed of till the 22nd of April, 1924, when it was granted in the presence of the applicants and their counsel. The certificate was taken by the appellants on the 29th of April, 1924.

The appeal itself was not, however, filed till the 8th of July, 1924. Mr. Nawal Kishore urged that the appellants were entitled to five days spent in obtaining the copies, *i.e.*, from the 12th of November to the 16th of November, 1923, and 140 days from

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the 5th of December, 1923, to the 22nd of April, 1924, when the application was granted. According to him, therefore, the appeal should have been filed on the 1st of July, 1924, and was therefore seven days late. In the alternative he contended that the 29th of April, 1924, the day on which the certificate was taken by the appellants, should not be counted and that therefore the appeal was in any case one day late.

For the appellants Mr. Mukand Lal Puri claimed that his clients were entitled to a credit of 242 days and that the appeal was, therefore, within time.

The first point for consideration is the meaning of the second proviso to section 41 (3) of the Punjab Courts Act which runs as follows:—

“ Provided also that in computing the period for an appeal under sub-section (1) of this section the time during which the application under this sub-section has been pending shall be excluded.”

The question is what is the meaning of the word “ pending ” as used in this section. According to Mr. Nawal Kishore the meaning of this word is the ordinary dictionary meaning which would imply that the application was only pending up to the time of its decision, that is to say, in the present case up to the 22nd of April, 1924, on which date the application was definitely granted. On the other hand, Mr. Puri contended that “ pending ” should mean that the application was not decided until the certificate had been issued.

It will be seen that the words employed by the Legislature in dealing with similar matters under the Limitation Act are different. Under the Limitation Act the time to be excluded is the time

“requisite” for obtaining a copy, etc. It seems to me that had the Legislature intended to exclude the period between the filing of the application for a certificate and the actual obtaining of the certificate it would have been easy to have expressed that intention by following the phraseology in the Limitation Act. Instead of doing so the Legislature has thought fit to exclude only that period of time during which the application for certificate was pending and it seems to me that the moment the application was granted the matter was concluded and the application ceased to be pending. In this view of the matter the contention advanced by Mr. Nawal Kishore appears to be correct and the appellants are not entitled as of right to exclude the period between the 22nd of April and the 29th of that month, and the appeal is, therefore, barred by time.

Mr. Puri then urged that in any event the period in question should be conceded under the provisions of section 5 of the Indian Limitation Act on the ground that his clients had acted in good faith and had shown sufficient cause for not preferring the appeal within the prescribed period.

In a case where the appeal was filed within a week or ten days of obtaining the certificate the question of applying section 5 might arise. But the delay in filing this appeal subsequent to the obtaining of the certificate appears to me to be inordinate. Admittedly the certificate was in their possession on the 29th of April, 1924. It is also apparent that all the necessary copies had been obtained by the appellants by the 16th of November, 1923. Notwithstanding this the appeal was not filed till the 8th of July, 1924, and I cannot regard Mr. Puri's explana-

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tion that his clients thought that they were entitled to deduct the full period up to the 29th of April, as amounting to sufficient cause under section 5 of the Indian Limitation Act. I would, therefore, hold this appeal barred by time and dismiss it accordingly, leaving the parties, however, to bear their own costs.

CURRIE J.

CURRIE J.—I concur.

*N. F. E.*

*Appeal dismissed.*

### CIVIL REFERENCE.

*Before Addison and Bhide JJ.*

HOTZ TRUST OF SIMLA—Petitioners

*versus*

COMMISSIONER OF INCOME TAX—Res-  
 pondent.

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May 29.

Civil Reference No. 8 of 1930.

*Indian Income Tax Act, XI of 1922 (as amended by Acts XI of 1924 and XXII of 1930), Sections 3, 40—Trustees carrying on business for the benefit of others—whether they or beneficiaries individually, assessable to income tax.*

The owner of a large Hotel business executed a trust deed drawn up to govern the disposition after her death of the business, whereby a trust was created for the continuance and maintenance of the Hotel business and properties and for the advancement and otherwise for the benefit of the deceased's eight children as beneficiaries. From the trust deed it was apparent that the trustees who were three in number, *viz.*, two of the deceased's children and one other person, had full powers to carry on the business, extend it, accumulate income and borrow capital which could be repaid by instalments up to half the annual income; and that they were under obligation also to pay part of the income in satisfaction of certain