

**FULL BENCH.**

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*Before Young C. J. and Addison and Abdul Rashid JJ.*

JOG DHIAN (JUDGMENT-DEBTOR) Appellant

*versus*

HUSSAIN (DECREE-HOLDER)

JEWAN DAS (JUDGMENT-DEBTOR) } Respondents.

**Letters Patent Appeal No. 20 of 1932.**

*Letters Patent Appeal — Limitation — Time taken for obtaining copy of judgment appealed from — whether can be excluded — Rules and Orders of High Court (1932 Edition), Volume V, Chapter 1-A, rule 4 — Indian Limitation Act, IX of 1908, Sections 12, 29.*

*Held*, that the time requisite for obtaining a copy of the judgment appealed from, which under the rules of the High Court need not be filed with the memorandum of appeal, cannot be excluded for the purpose of limitation in the case of an appeal under the Letters Patent to which those rules are applicable.

*Mukund Mahto v. Niranjan Chakravarty* (1), and *Ganny v. Russell* (2), relied upon.

*Dyal Singh v. Budha Singh* (3), referred to.

*Letters Patent Appeal from the order passed by Jai Lal J. in C. A. No. 1267 of 1931, on 16th February, 1932, reversing that of Sheikh Ata Ilahi, Subordinate Judge, 1st Class, Sargodha, dated 9th June, 1931, and directing the Senior Subordinate Judge to proceed with the execution.*

BADRI DAS, for Appellant.

L. M. DATTA, for (Decree-holder) Respondent.

The judgment of the Full Bench was delivered by—

YOUNG C. J.—The question referred to the Full Bench is whether the time taken for obtaining a copy

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(1) 1934 A. I. R. (Pat.) 353.      (2) (1930) I. L. R. 8 Rang. 380 (F. B.).

(3) (1921) I. L. R. 2 Lah. 127.

of the judgment appealed from shall be excluded for the purpose of limitation in the case of a Letters Patent Appeal.

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Chapter 1-A, rule 4, of Volume V of the Rules and Orders of the High Court, lays down that a Letters Patent Appeal must be presented within 30 days from the date of the judgment appealed from, unless the admitting Bench in its discretion, for good cause shown, grants further time for the presentation. Such memorandum of appeal need not be accompanied by a copy of the decree, order or judgment appealed from, but must contain a declaration to the effect that the Judge who passed the judgment has certified that the case is a fit one for appeal. The time spent in obtaining the certificate from the Judge (including the date of application and the date on which the Judge passed the order) shall be excluded in computing the period of limitation.

This question has already been before a Division Bench of this Court which held, *Dyal Singh v. Budha Singh* (1), that the Letters Patent together with the rules framed thereunder as to limitation for filing appeals were a complete Code in themselves and therefore the general provisions of the Limitation Act, including section 4, did not apply to appeals filed under section 10 of the Letters Patent. It is contended, however, that since the amendment of section 29 of the Indian Limitation Act both sections 4 and 12 are now applicable in the case of a Letters Patent Appeal. If section 12 is applicable, the time requisite for getting a copy of the judgment of the Single Judge would have to be excluded in spite of the fact that in rule 4 of Chapter 1-A of Volume 5 of the

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Rules and Orders, it is laid down that the memorandum of appeal need not be accompanied by a copy of the decree or order appealed from.

The argument was that the Letters Patent and the rules framed thereunder must be held to be a special or local law. If this is so, then the amended section 29 of the Indian Limitation Act would apply and under section 12 the time requisite for getting a copy of the judgment must be excluded. From the notes in the Madras Law Journal, Volume 44, at page 15, it would appear that a Division Bench of the Madras High Court has taken the view that section 12 does apply though the full report of the case is not given there. The question came before a Division Bench of the Patna High Court composed of the Chief Justice and Varma J. They held in *Mukund Mahto v. Niranjan Chakravarty* (1), that the Letters Patent and the rules of the High Court did not come under the category of special or local laws. They considered that by "special or local laws" was meant legislative enactment for special or local circumstances. They quoted with approval the remarks of Cunliffe J. in *Ganny v. Russell* (2) with regard to this matter. He said:—

"The question therefore seems to me to be whether the Rules made by a High Court under its Letters Patent and by virtue of the Code of Civil Procedure amount to a special or local law. In my opinion they do not. I think that the expression 'special or local law' cannot possibly be applied to Rules under the Letters Patent of a High Court. The Letters Patent themselves constitute neither a Special nor a Local Law. They are a Charter from

(1) 1934 A. I. R. (Pat.) 353. (2) (1930) I. L. R. 8 Rang. 380 (F. B.).

the Crown. The Code of Civil Procedure is a General Law in *pari materia* with the Limitation Act.

“ In my opinion High Court Rules approximate very closely to bye-laws. They can be altered at will. They can be canvassed. They are subordinate and domestic enactments.”

We are in respectful agreement with these remarks and with the decision of the Division Bench of the Patna High Court and hold that the rules under the Letters Patent do not amount to a special or local law. It follows that the time requisite for obtaining a copy of the judgment appealed from, which need not be filed with the memorandum of appeal, cannot be excluded.

This was the only question referred to the Full Bench, but it was pointed out to us during the arguments that there was a drafting error in Rule 4 of Chapter 1-A, Volume 5, of the High Court Rules and Orders (1932 edition), dealing with limitation, so far as Letters Patent Appeals were concerned. Rule 4, as it stood from 1919 up to the 16th April, 1929, ran in the following words :—

“ No memorandum of appeal preferred under section 10 of the Letters Patent shall be entertained if presented after the expiration of 30 days from the date of the judgment appealed from, unless a Judge in his discretion for good cause shown shall grant further time for the presentation of such memorandum of appeal. A memorandum of appeal under section 10 of the Letters Patent need not be accompanied by a copy of the decree, order or judgment appealed from.”

Clause 10 of the Letters Patent was amended in 1928 so as to make a certificate necessary in certain

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cases from the Judge whose order was under appeal. In view of the amendment of the Letters Patent the Rule relating to the presentation of Letters Patent Appeals had to be amended. This was done by means of Correction Slip No. 46, dated the 16th April, 1929. The new rule ran as follows:—

“ No memorandum of appeal preferred under section 10 of the Letters Patent, shall be entertained, if presented after the expiration of 30 days from the date of the judgment appealed from, unless a Judge in his discretion, for good cause shown, shall grant further time for the presentation. Such memorandum of appeal need not be accompanied by a copy of the decree, order or judgment appealed from, but must contain a declaration to the effect that the Judge who passed the judgment, has certified that the case is a fit one for appeal. The time spent in obtaining the certificate from the Judge.....shall be excluded in computing the period of limitation.”

This rule prescribed a period of 30 days for the presentation of all appeals under clause 10 of the Letters Patent. It appears that this rule continued to be in force till the 31st October, 1932. A new edition of the High Court Rules and Orders was published on that date. In the 1932 edition the rule runs in the following words:—

“ No memorandum of appeal preferred under clause 10 of the Letters Patent for which a certificate is required under that clause, shall be entertained if presented after the expiration of 30 days from the date of the judgment appealed from, unless the admitting Bench in its discretion, for good cause shown, grants further time for the presentation.....”

The present appeal was presented on the 23rd March, 1932. It is obvious that on the date of the

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presentation of this appeal the old rule, laying down that all Letters Patent Appeals must be presented within 30 days from the date of the judgment appealed from, was still in force. It was six months after the presentation of the present appeal that the new rule was brought into force by the publication of a new edition of the High Court Rules and Orders. So far as the present appeal is concerned, it must be governed by the rule as framed on the 16th April, 1929, alluded to above. In pursuance of that rule all Letters Patent Appeals had to be presented within a period of 30 days from the date of the judgment appealed from.

Rule 4 of Chapter 1-A of Volume V of the Rules and Orders of the High Court (1932 edition), contains a drafting error, which is to the effect that the words "for which a certificate is required under clause 10 of the Letters Patent" have been inserted in this rule in the wrong place with the result that no period of limitation is provided for appeals from the decision of a Single Judge in which a certificate is not required. It is clear that there was no intention of abolishing the period of limitation for appeals from an order or judgment for which no certificate was required. So far as the present appeal is concerned, the appellant could not possibly have been misled by the error pointed out above as he had filed his appeal six months before the new rule was published. This drafting error has since been put right.

We, therefore, see no reason to hold that a memorandum of appeal can be put in at any time in cases where an order appealed from does not require a certificate of the Judge, who made the order.

A. N. C.

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