

1938
 HARNAM SINGH
 v.
 THE CROWN.
 ———
 DIN
 MOHAMMAD J.

Detention being the only basis on which the District Magistrate had upheld the conviction of the petitioner, I have no option now but to acquit him. The petitioner will be discharged from his bail bond.

A. K. C.

—————
MISCELLANEOUS CIVIL.
 —————

1938
 Oct. 21.

Before Addison and Din Mohammad JJ.
**THE PUNJAB CO-OPERATIVE BANK,
 LIMITED, AMRITSAR (PLAINTIFF)**

Petitioner,

versus

**THE PUNJAB NATIONAL BANK, LIMITED,
 AMRITSAR, AND OTHERS (DEFENDANTS)**

Respondents.

Civil Miscellaneous No. 462 of 1938.

Indian Limitation Act (IX of 1908), S. 12 (2) and (3), Art. 179 — Application for leave to appeal to His Majesty in Council — Limitation — Time spent in obtaining copy of judgment — whether excluded.

Held, that in computing the period of limitation for an application for leave to appeal to His Majesty in Council the time requisite for obtaining a copy of the judgment complained of, cannot be excluded, sub-s. (3) of s. 12 of the Indian Limitation Act not being applicable to such a case.

Wilayati Begam v. Jhandu Mal-Mithu Lal (1), Gurmukh Rai v. Secretary of State (2), Gulab Chand v. Pearey Lal (3), and Nur Mahomed v. Hassomal (4), relied upon.

In re Secretary of State for India (5) and R. K. Banerjee v. Alagamma Achi (6), not followed.

Petition under Clause 29 of the Letters Patent and Sections 109 and 110 and Order 45, Rule 2, Civil

(1) (1927) 92 I. C. 897.

(2) 1934 A. I. R. (All.) 974.

(3) I. L. R. (1935) 57 All. 455.

(4) (1924) 78 I. C. 953.

(5) I. L. R. (1925) 48 Mad. 939.

(6) I. L. R. (1935) 13 Rang. 762.

Procedure Code, for leave to appeal to His Majesty in Council, against the judgment passed in Regular First Appeal No.249 of 1937, on 29th March, 1938, reversing that of Pandit Rajindar Kishen Kaul, Subordinate Judge, 1st Class, Amritsar, dated 30th April, 1937, and dismissing the plaintiffs' suit.

R. L. CHAWLA, for Petitioner.

JAGAN NATH AGGARWAL, for Respondents.

The order of the Court was delivered by—

DIN MOHAMMAD J.—This is an application for leave to appeal to His Majesty in Council against an order of a Division Bench of this Court accepting the appeal of the respondent from a decree of the Subordinate Judge, 1st Class, Amritsar, dated the 30th April, 1937.

Counsel for the respondent contends that the application is time-barred, inasmuch as the judgment from which an appeal is being preferred to His Majesty in Council was pronounced on the 29th March, 1938, and the present application was not put in until the 5th July, 1938. The limitation for such applications is 90 days and the only concession that the petitioner can claim is that allowed under section 12 (2) of the Limitation Act (IX of 1908). In support of this contention he relies on *Wilayati Begam v. Jhandu Mal-Mithu Lal* (1), *Gurmukh Rai v. Secretary of State* (2), *Gulab Chand v. Pearey Lal* (3) and *Nur Mahomed v. Hassomal* (4), and they are no doubt clear on the point. Counsel for the applicant on the other hand urges that sub-section (3) of section 12 governs the case and in support thereof places his reliance on *In re Secretary of State for India* (5) and *R. K. Banerjee v. Alagamma Achi* (6).

1938

THE PUNJAB
CO-OPERATIVE
BANK, LIMITED,
AMRITSAR
2.
THE PUNJAB
NATIONAL
BANK, LIMITED,
AMRITSAR

(1) (1927) 92 I. C. 897.

(2) 1934 A. I. R. (All.) 974.

(3) I. L. R. (1935) 57 All. 455.

(4) (1924) 78 I. C. 953.

(5) I. L. R. (1925) 48 Mad. 939.

(6) I. L. R. (1935) 13 Rang. 762.

1938

THE PUNJAB
CO-OPERATIVE
BANK, LIMITED,
AMRITSAR
v.
THE PUNJAB
NATIONAL
BANK, LIMITED,
AMRITSAR.

In our view the wording of sub-sections (2) and (3) of section 12 is so unambiguous that it is not necessary to refer to any authorities at all. In sub-section (2) it is enacted that in computing the period of limitation prescribed for an *appeal*, an *application for leave to appeal* and an *application for a review of judgment*, the day on which the judgment complained of was pronounced, and the time requisite for obtaining a copy of the decree, sentence or order appealed from or sought to be reviewed, shall be excluded. Sub-section (3) lays down that where a decree is appealed from or sought to be reviewed, the time requisite for obtaining a copy of the judgment on which it is founded shall also be excluded. Reading the two sub-sections together it is obvious that in sub-section (2) the Legislature was dealing with three different matters, that is (1) appeal, (2) application for leave to appeal and (3) application for a review of judgment, and in the case of all the three documents it was stated that the day on which the judgment was pronounced and the time requisite for obtaining a copy of the decree, etc., shall be excluded. That sub-section made no reference to the time requisite for obtaining a copy of the judgment. It was therefore that a supplemental provision was enacted in the form of sub-section (3). There the matters dealt with are two and not three, viz., appeal from a decree and an application for a review of judgment, and in respect thereof it is provided that the time requisite for obtaining a copy of the judgment shall also be excluded. The use of the word 'also' is significant in this connection. It would be evident, therefore, that the Legislature deliberately excluded the third matter that had been dealt with in sub-section (2), viz., an application for leave to appeal. In these circumstances, it cannot be urged that in computing the

period of limitation for an application for leave to appeal the time requisite for obtaining a copy of the judgment can be excluded. In the present case there is nothing on the record to show that the applicant had ever made an application for obtaining a copy of the decree and this being so, the applicant was entitled to exclude only the day on which the judgment complained of was pronounced and no other period. In other words, he was bound to submit his application on the 91st day. This application, however, was presented on the 98th day and it is, therefore, clearly time-barred.

On the grounds stated above we dismiss this application with costs.

A. N. K.

Application dismissed.

APPELLATE CIVIL.

Before Addison and Ram Lall JJ.

RAJA SINGH (PLAINTIFF) Appellant,

versus

KHAZAN SINGH, VENDEE, } (DEFENDANTS)
 SUJAN SINGH, VENDOR, } Respondents.

Regular Second Appeal No. 445 of 1938.

Punjab Pre-emption Act (I of 1913), S. 8 — The Cantonment Act (II of 1924), SS. 3, 286 — Area under the control of Cantonment Board — land situated therein whether exempt from the right of pre-emption.

Section 3 of the Cantonment Act, 1924, enacts that the Local Government may, by notification, declare a place in which any part of His Majesty's regular forces are quartered or which, being in the vicinity of any such place, is required for the service of such forces to be a Cantonment for the purposes of the Act and of all other enactments for the time being in force.

Section 286 of the same Act enacts that "the Local Government may by notification extend to any area beyond a

1938

THE PUNJAB
 CO-OPERATIVE
 BANK, LIMITED,
 AMRITSAR

v.
 THE PUNJAB
 NATIONAL
 BANK, LIMITED,
 AMRITSAR.

1938

Oct. 24.