

ORIGINAL CIVIL.

Before Sir Lawrence Jenkins, K.C.L.E., Chief Justice, and Mr. Justice Batty.

1907.

February 1.

KARSONDAS DHARAMSEY, APPELLANT, v. GANGABAI
AND OTHERS, RESPONDENTS.*

Application for leave to appeal to the Privy Council—Limitation—High Court's refusal to admit appeal after period of limitation—Civil Procedure Code (Act XIV of 1882), section 595—"Decree"—"Final decree passed on appeal", meaning of.

An order of the High Court refusing to admit an appeal after the period of limitation prescribed therefor by the Limitation Act is not a "decree passed on appeal" by a High Court under section 595 of the Civil Procedure Code and there is therefore no jurisdiction to grant leave to appeal therefrom to the Privy Council under clause (a) or (b) of that section.

Sunder Koer v. Chandiswar Prosad Singh,⁽¹⁾ followed.

THIS was an application for leave to appeal to the Privy Council against an order of the Appeal Court rejecting the applicant's application for admitting his appeal against the decree of Russell, J., passed in this suit on the 10th April 1901.

At the time of the institution of the suit as well as the passing of the decree the applicant was a minor and was accordingly represented in this suit by his guardians *ad litem*, duly appointed by the Court.

The applicant obtained majority in July 1905 and he thereafter on the 22nd August 1905 applied to the Appeal Court for the admission of his appeal under section 5 of the Limitation Act though out of time. In order to make out a "sufficient cause" for not presenting the appeal within time the applicant alleged that his guardians *ad litem* failed and neglected to do their duty by not appealing against the said decree within the usual 20 days' time.

The Appeal Court rejected the application with costs holding that the Court was not satisfied that there was any sufficient cause shown for not filing the appeal within time.

* Original Suit No. 573 of 1899.

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Against this order the applicant applied to the High Court for leave to appeal to the Privy Council.

Setalvad, for the applicant.

Inverarity, for the respondents.

JENKINS, C. J. :—This is an application for leave to appeal to the Privy Council from an order of the High Court refusing to admit an appeal after the period of limitation prescribed therefor by the Limitation Act.

The ground for this refusal was that the appellant had failed to satisfy the Court that he had sufficient cause for not presenting the appeal within the period of limitation. The decree from which it was then desired to appeal was one passed by a single Judge in the exercise of the High Court's Original Civil Jurisdiction.

The question now arises whether we have power to grant the leave sought.

Mr. Setalvad, for the applicant, argues that the order of refusal, having regard to the definition of "decree" in section 594 of the Civil Procedure Code, is a final decree within either clause (a) or clause (b) of section 595 of the Civil Procedure Code.

He does not rely on clause (c).

But can it be said that this is a final decree *passed on appeal* by a High Court?

The meaning of the expression "passed on appeal" has been settled by a line of authorities, which it is right that we should follow: see *Sunder Koer v. Chandishwar Prasad Singh*⁽¹⁾ and the cases there cited. And applying that interpretation to the circumstances of this case, it cannot (in my opinion) be said that there is here a decree passed on appeal by a High Court.

Then can it be said that this is a final decree passed by a High Court in the exercise of Original Civil Jurisdiction?

The meaning of the words *Original Civil Jurisdiction* is made clear by clause 12 of the Letters Patent read with clause 15. The application was made not to a Judge exercising Ordinary

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Original Civil Jurisdiction, but to the High Court, represented by a Bench of two Judges, as the tribunal to which the appeal from the decree of the single Judge would lie.

Therefore the order of refusal was not a decree passed by a High Court in the exercise of Original Civil Jurisdiction.

It is true that in *Ram Narain Joshi v. Parmeswar Narain Mahla*⁽¹⁾ the Privy Council did consider whether the power of admitting an appeal beyond time might have been exercised.

But that in no way concludes the present case, for it does not appear from the report either in the Law Reports or in *Ram Narain Joshi v. Parmeswar Narain Mahla*⁽¹⁾ that the appeal to the Privy Council was preceded by leave obtained from the High Court under chapter 45 of the Civil Procedure Code.

But that is not all, for from the judgment delivered by Sir Arthur Wilson it would seem that in that case there had been a dismissal of the appeal, and that clearly would be a final decree passed on appeal.

Therefore it appears to me we have no jurisdiction to give the leave sought either under clause (a) or clause (b) of section 595, and it is on those clauses alone that the applicant has relied.

The application will be dismissed with costs.

Application dismissed.

Attorneys for the applicant: Messrs. *Craigie, Lynch and Owen.*

Attorneys for defendants: Messrs. *Mansukhlal, Jamselji and Hirabai*, and Messrs. *Daphtry, Ferreira and Divan.*

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(1) (1902) 30 Cal. 309.