

ment Officer without taking into consideration the injustice of the contention that he has received no notice when he was actually a litigating party in the proceeding in which the claim was finally settled. If the claim had been duly discharged under section 29B (3) it is difficult to understand why the Talukdari Settlement Officer took the trouble to appeal to the High Court. The plaintiff must have his costs throughout.

Order set aside.

G. B. R.

APPELLATE CIVIL.

Before Sir Basil Scott, Kt., Chief Justice, and Mr. Justice Batchelor.

RAOJI ALIAS BALVANT KESHAV DESHAMUKH AND ANOTHER
(LEGAL REPRESENTATIVES OF ORIGINAL DEFENDANT 1), APPELLANT, v.
KRISHNARAO BIN ANANDRAO AND OTHERS (ORIGINAL PLAINTIFFS AND
DEFENDANT 2).^o

1914.
March 26

Limitation Act (IX of 1908), section 5—Appeal presented beyond time—Provisional admission to file in the absence of respondent—Preliminary objection taken by the respondent at the hearing—Entertainment of the question—Appeal dismissed with all costs—Second appeal.

A time-barred appeal having been provisionally admitted to the file in the absence of the respondent and at the hearing the respondent having taken a preliminary objection that the appeal was presented beyond time, the Court allowed the objection and dismissed the appeal with all costs on the appellant.

On further appeal by the appellant,

Held, that there being no sufficient cause as a matter of law for extending the time under section 5 of the Limitation Act (IX of 1908) there was no objection to the question being entertained after the provisional admission of the appeal to the file in the absence of the respondent.

Held, further, that the appeal against the order dismissing the appeal was a second appeal and not a first appeal because it was an appeal against the decree of an appellate Court.

1914.
RAOJI
v.
KRISHNA-
RAO.

APPEAL against the decision of G. B. Laghate, First Class Subordinate Judge of Nasik with appellate powers, rejecting as time-barred an appeal against the decree of R. K. Bal, Subordinate Judge of Sinnar.

The plaintiffs sued to recover possession of the lands in suit and for costs and mesne profits with a declaration that none of the defendants had any right over the properties.

Defendant 1 denied his liability and contended *inter alia* that the suit was not maintainable, the lands in suit being the subject-matter of a consent decree all the terms of which had not been complied with.

Defendant 2 answered that Rs. 1,100 were still due to him on account of the mortgage of the lands in suit.

The Subordinate Judge found that Rs. 1,100 were due by defendant 1 to defendant 2 on account of the mortgage of Rs. 2,200 over the lands in suit. He, therefore, passed a decree directing that plaintiffs should take possession of the lands in suit from defendant 2 subject to the mortgage of the defendant till satisfaction, that defendant 1 should pay the mortgage lien of defendant 2 within six months and thus redeem the properties and that on redemption defendant 2 should hand over the title deeds of the property to the plaintiffs.

Defendant 1 having appealed, the appeal was found to be beyond time and it was provisionally admitted to the file. At the hearing the respondents' pleader having taken a preliminary objection that the appeal was barred by limitation it having been presented beyond time, the appellant produced an affidavit to prove that there was sufficient cause for the delay. It was alleged that the delay was due to the pleader's *karkun* who, through forgetfulness, did not apply for copies in time.

The appellate Judge found that sufficient cause was not proved for the delay in presenting the appeal and he dismissed the appeal with all costs on the appellant following *Karsondas Dharamsey v. Bai Gungabai*⁽¹⁾.

Defendant 1 preferred a further appeal and he having died pending the appeal his legal representatives were brought on the record.

R. R. Desai for the appellants (legal representatives of defendant 1).

G. S. Rao for respondent 3 (defendant 2).

SCOTT, C. J. :—We cannot say that as a matter of law there was sufficient cause for extending the time under section 5, and we do not think there was any objection to the learned Judge entertaining the question after he had provisionally admitted the appeal to the file in the absence of the respondent. We are of opinion that this is a second appeal and not a first appeal, because it is an appeal from a decree of an appellate Court. We dismiss the appeal with costs.

Appeal dismissed.

G. B. R.

(1) (1905) 30 Bom. 329.

ORIGINAL CIVIL.

Before Mr. Justice Macleod.

GOOLBAI BEHRAMSHA HARVER, PLAINTIFF, v. BEHRAMSHA D.
HARVER, DEFENDANT.*

1913.

July 4.

Parsis—Maintenance—The Parsi Marriage and Divorce Act (XV of 1865), section 31—Suit by a Parsi wife for permanent maintenance without claim for judicial separation—The High Court on its Original Side has no jurisdiction in such suit to pass an order for maintenance.

The Bombay High Court on its Original Side has no jurisdiction in a suit between a Parsi husband and a Parsi wife to make an order for permanent

* Suit No. 105 of 1913.