APPELLATE CIVIL.

Before Justice Sir Cecil Brett and Mr. Justice Carnduff.

1912

Feb. 29.

HARISH CHANDRA TEWARY

v.

CHANDPUR COMPANY, LD.*

Appeal to Privy Council—Limitation—Period between the signing of the judgment and the decree, how far allowed to be calculated in saving limitation in filing Privy Council appeal—Limitation Act (IX of 1908), ss. 5, 12, Sch. I, Art. 179.

Where the appellant to His Majesty in Council has failed to apply for a copy of the judgment and decree within the period allowed for filing the appeal, he cannot be allowed to say that he was prevented from filing the application in time by reason of the decree not being signed; and he is not entitled to ask the Court under s. 12 of the Limitation Act to deduct the period between the signing of the judgment and the signing of the decree in computing the period of limitation for appeal to His Majesty in Council.

Bechi v. *Ahsan-ullah Khan* (1) relied on.

Bani Madhub Mitter v. *Matungini Dassi* (2) distinguished.

APPLICATION for leave to appeal to His Majesty in Council by the plaintiff.

The judgment appealed against was delivered on the 7th July 1911. The application for leave was made on the 30th January 1912, that is, more than 23 days after the period of six months allowed by the Limitation Act to file a Privy Council appeal. The appellant contended that the period of 23 days beyond six months did not bar the appeal, as the decree was signed about a month after the delivery of the judgment, and that under the provisions of the new

* Application for leave to appeal to His Majesty in Council, No. 6 of 1912.

(1) (1890) I. L. R. 12 All. 461. (2) (1886) I. L. R. 13 Calc. 104.

Limitation Act of 1908, he was entitled to get the benefit of the period between the signing of the judgment and the decree in computing limitation.

Babu Karunamoy Bose, for the petitioner. It is true application for copy of the judgment and decree was not made till the 26th January 1912, but I am now entitled to have six months, and the period between the signing of the judgment and the decree to file the appeal. Under the old Limitation Act, time taken for copy of judgment and decree was not allowed. It is now allowed under section 12 of the new Limitation Act. Supposing I had applied for copy of judgment and decree as soon as the judgment was delivered, I would not have got them for a month almost. If, however, that period is not allowed, I should have the delay excused under section 5, as this is the first case after the passing of the new Act. The principle of the case of *Bani Madhub Mitter* v. *Matungini Dassi* (1) is applicable. The later Allahabad case, *Bechi* v. *Ahsanullah Khan* (2), lays down no sound rule of law.

Babu Jogesh Chandra Roy, for the opposite party, contended that the petitioner was guilty of laches, and not entitled to have the special favour of the Court.

Cur. adv. vult.

BRETT J. The value of the property in the suit in respect of which this application is made for leave to appeal to His Majesty in Council is Rs. 21,206-10. The decisions of the two Courts are however concurrent, and it will therefore be necessary for the applicant to satisfy us that his appeal raises a substantial question of law.

(1) (1886) I. L. R. 13 Calc. 104. (2) (1890) I. L. R. 12 All. 461.

1912

HARISH CHANDRA TEWARY v. CHANDPUR COMPANY, LD.

BRETT J.

The question, however, which we have to determine first is whether the application has been made within the time limited by the law, or whether it is barred by limitation.

The judgment of this Court, against which the applicant seeks to appeal, was delivered on the 7th July 1911, and the application was made on the 30th January 1912, that is to say after an interval of six months and 23 days. The period fixed by Article 179, Schedule I of the Limitation Act (IX of 1908), within which such an application should be made, is six months from the date of the decree appealed against, and, unless the applicant is able to make out a case to avoid the bar of limitation, his application must necessarily be dismissed.

The case put forward by the appellant is as follows: Though the judgment of this Court was delivered on the 7th July 1911, he says that the decree which, as required by Order XX, rule 7, bears the same date as the judgment, was, in fact, not signed till about a a month afterwards, and he has filed in support of his application an affidavit, the second paragraph of which runs as follows:—

"That the decree was prepared and signed by the Hon'ble Judges after about a month of the same (the date of the judgment, the 7th July, 1911), and the decree, duly prepared and signed, was received by the Peshkar from the Bench Clerk on the 8th August 1911, and it was not till then that the decree was available for taking copies of the same."

The applicant relies on section 12 of the Limitation Act (IX of 1908) and on the Full Bench decision of this Court in the cases of *Bani Madhub Mitter* v. *Matungini Dassi* (1) to support the contention that the

(1) (1886) I. L. R. 13 Calc. 104.

application, having been made within six months from the date when the decree was signed, was in time.

In dealing with the affidavit we have to observe that it is not precise as to the date on which the decree was signed, nor does it explain the circumstances under which the decree was not available for the purpose of preparing a copy of it till the 8th August, nor what proof the applicant had that such was the fact.

Application for a copy of the judgment and decree was not made till the 26th January 1912, that is to say, till more than six months from the date of the judgment, and the copy was delivered the same day.

It cannot, therefore, be urged that in this case the applicant was prevented from obtaining a copy of the decree before the 8th August, for in fact he made no effort to obtain a copy till the 26th January following.

Only one day's delay having occurred in furnishing the copy of the decree, section 12 of the Limitation Act by itself cannot assist the applicant to avoid the bar of limitation.

The Full Bench decision of this Court, on which the applicant relies, dealt with the question of limitation under section 12 of the Act as affecting appeals from decrees passed by two Munsifs in 1886. In that year the coresponding provision in the old Limitation Act of 1877 did not apply to applications for leave to appeal otherwise than as a pauper, and therefore did not apply to applications for leave to appeal to His Majesty in Council, and the judgment of the Full Bench at the time of its delivery certainly did not, and could not be taken to, apply to such applications.

It must also be noticed that before the delivery of that judgment the date of the signing of the decree had to be entered by Judges of the lower Courts in the

1912

HARISH CHANDRA TEWARY v. CHANDPUR COMPANY, LD.

BRETT J.

order sheet in accordance with the rules of the High Court, and after that judgment had been delivered, in order to assist further the Appellate Court, instructions were issued by the High Court to the Subordinate Courts directing the Judges of those Courts to note on the decree itself the date when it was signed. In those Courts, therefore, there was and is a definite record of the date when the decree is signed.

In that judgment the Full Bench held as follows:

"In our opinion the fact that the decree was not in existence, that is signed by the particular Judge, and could not therefore be copied until 23rd July, that is six days after the date that it bears (*i.e.*, the date of the judgment), entitles the appellant to ask us to deduct those six days in addition to the eight days (delay which occurred in obtaining a copy of the decree), and thus to hold that under section 12 of the Limitation Act the appeal has been presented within the prescribed period."

The contention advanced on behalf of the appellant is that, since section 12 of the Limitation Act has been made applicable to applications for leave to appeal to His Majesty in Council, that decision must be taken to apply to such applications as well as to appeals against the decrees of the Subordinate Civil Courts, and that it entitles the applicant to claim a deduction of the days intervening between the delivery of judgment and the signing of the decree. In the present case if such an allowance be made, the application would apparently be in time.

In the case of *Bechi* v. *Ahsan-ullah Khan* (1) a Full Bench of the Allahabad High Court in dealing with the effect of section 12 of the Limitation Act held that "in computing the time to be excluded under section 12 of the Limitation Act from a period of limitation the

(1) (1890) I. L. R. 12 All. 461.

time requisite for obtaining a copy does not begin until an application for copies has been made. If, therefore, after judgment the decree remains unsigned, such interval is not to be excluded from the period of limitation unless, an application for copies having been made, the applicant is actually and necessarily delayed through the decree not having been signed." Dissent was then expressed from the decision of the Full Bench of this Court in the case of *Bani Madhub Mitter* v. *Matungini Dassi* (1).

In this High Court the practice before the passing of the new Limitation Act was in accordance with the law to apply strictly the rule of limitation, and not to make any allowance for the time occupied even in obtaining copies of the decrees. Since the passing of the new Act allowance for that period must now be made, and this has been so held by this Court by its order delivered on the 6th February 1912 in the case of the application for leave to His Majesty in Council, No. 102 of 1910.

But in this Court there is no rule providing that the dates of signing the decrees shall be noted by the Judges on them at the time of signing, so that there is in fact no definite record from which the date when a decree is signed can be accurately ascertained. To extend the application of the Full Bench ruling of this Court to applications for leave to appeal to His Majesty in Council in existing circumstances would have the result of indefinitely extending the period of limitation, for there would be no record by which its limit might be ascertained.

There is too a marked point of distinction between the facts of the case now before us and the facts of the cases which were before the Full Bench of this Court in 1886. In one of those cases the application for

(1) (1886) I. L. R. 13 Calc. 104.

1912

HARISH CHANDRA TEWARY v. CHANDPUR COMPANY, LD.

BRETT J.

copy had been made before the decree had been signed, and in both cases the applications for copies had been made before the period of appeal, reckoned from the date of the judgment, had expired. In the case now before us the application for the copy of the judgment and decree was not made till after the expiry of six months from the date of the judgment, that is to say till after the period of limitation, if reckoned from the date of the judgment, had expired.

The Full Bench of this Court, in dealing with the question of limitation in 1886, considered what would be the effect if the decree were not signed till after the period of limitation had expired, but did not consider that would be the effect if the appellants had taken no steps to obtain copies of the decrees within the period of limitation.

This point was considered by the Full Bench of the Allahabad Court, and appears to be of considerable importance in the appeal before us.

In dealing with that point the Allahabad Court held that the appellant was only entitled to be excused under section 12 of the Limitation Act for a delay for which he was not himself responsible, and that appears to be the principle underlying that section.

We are not prepared to hold that the judgment of the Full Bench relied on by the appellant is a binding authority on us in the present case.

We are of opinion that in the present case the applicant is not entitled to ask us under section 12 of the Limitation Act to deduct the period which expired between the signing of the judgment and the signing of the decree, because he, having failed to apply for a copy of the judgment and decree within the period of limitation, cannot be allowed to say that he was prevented from filing the application in time by reason of the fact that the decree was not signed.

The applicant further asks us to admit the appeal under the provisions of section 5 of the Limitation Act. His case is that he was misled by the judgment of the Full Bench of this Court into the belief that he would be allowed under section 12 of the Act to ask for a deduction of the period which elapsed between the date when the judgment was delivered and the date when the decree was signed. As this is the first occasion on which that point has been raised and there are grounds to support the contention that he was so misled, we think that in the circumstances we may accept this contention and under section 5 of the Act allow an extension of the period of limitation to cover the time between the date of the judgments and the date of signing the decree. At the same time we desire to say that we grant this concession with considerable hesitation.

CARNDUFF J. I agree. The Full Bench decision of this Court on the construction of section 12 of the Limitation Act must, I think, be distinguished on the ground that the rule which it lays down in respect of appeals from the decrees of the Subordinate Courts is a rule which, regard being had to the circumstances and the practice here, cannot be applied to, and would surely not have been laid down by the Full Bench in connection with, appeals from the decrees of this Court. For what we have to deal with under section 12 is a matter of exact computation, and the material for making the deduction prescribed by the Full Bench for the *mufassal* is altogether wanting in this Court. But the applicant may, I think, be excused for having failed to perceive this distinction and acted on the assumption that the recent alteration in the law would have the result of giving him the benefit of the deduction. And I find that, so far as can be

1912

HARISH CHANDRA TEWARY v. CHANDPUR COMPANY, LD.

CARNDUFF J.

ascertained, the statement that the signed decree was not received from the Judges before the 8th August is correct. No doubt, it is possible that it had nevertheless been signed before the 30th July, in which event the time limited by law, even if calculated from the date of signing, would have expired before the present application was filed. But it is highly improbable that there was such delay, and, on the whole, the case seems to me to be one in which relief may, *pro hac vice*, properly be given under section 5 of the Act.

S. M.

CIVIL RULE.

Before Mr. Justice D. Chatterjee and Mr. Justice N. R. Chatterjea.

1912

March 4.

RAM CHARAN CHANDA TALUKDAR

v.

TARIPULLA.*

Sanction for prosecution—Sanction refused by Munsif—Appeal—Sanction granted by Subordinate Judge—Jurisdiction—Code of Criminal Procedure (Act V of 1898), s. 195—Civil Courts Act (XII of 1887), ss. 21 and 22—Code of Civil Procedure (Act V of 1908), ss. 24 (1) (a) and 115.

A suit having been dismissed by the Munsif and, on appeal, by the Court of Appeal, the defendants applied to the Munsif for sanction to prosecute the plaintiffs for offences under ss. 468 and 471 of the Indian Penal Code. This application was refused, but, on appeal, the Subordinate Judge granted such sanction :

Held, that the Court of the District Judge was the only Court to which such an appeal would properly lie.

Per N. R. CHATTERJEA J. For the purposes of s. 195 of the Criminal Procedure Code, a Munsif is not subordinate to a Subordinate Judge.

*Civil Rule, No. 5426 of 1911, against the order of Behari Lal Chatterjee, Subordinate Judge of Mymensingh, dated July 22, 1911.