

(1928) 05 AHC CK 0035
In the Allahabad High Court

Bajnath

APPELLANT

Vs

Doolarey Hajjam

RESPONDENT

Date of Decision : 17-05-1928

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 131

Citation : AIR 1928 All 708 : (1928) ILR (All) 865 : 110 Ind. Cas. 719

Hon'ble Judges : Sulaiman, Acting C.J.

Bench : Division Bench

Final Decision : Allowed

Judgement

Sulaiman, Ag. C.J.

1. This is an application for leave to appeal under the Letters Patent and for extension of time.
2. Had the judgment been delivered before the amendment of Section 10 of the Letters Patent came into force no leave would have been necessary and a substantive right of appeal could not be taken away by a subsequent amendment of the Letters Patent. The amendment came into force from the date of its publication in the Gazette, namely, 28th January 1928³. The judgment in the present case was delivered after this date, hence leave is necessary.
3. As regards the prayer for extension of time, it is quite clear that Section 5, Lim. Act, does not apply to this case, for the period is fixed not under the Limitation Act, but by special rules framed by this Court. Under Chap. 3, Rule 6 of the old rules there was power to extend the time for good cause shown. Under the new Rule 6 (A), there is no power to extend the time if 60 days have expired.
4. The question is whether the old rule or the new rule applies. The new rule though made earlier was published in the Gazette of 3rd March 1928. u/s 131, Civil P.C., rules Made by the High Court have the force of law from the date of publication, or from such other date as may be specified. In the present case no

date was specially specified. The present appeal was filed after the new rule came into force. It seems to me that, although the right of appeal is a substantive right, no one has a vested right in a period of limitation. It cannot be said that there is any substantive right in an appellant to wait for a particular period of time before filing the appeal. Rules of limitation are prima facie rules of procedure, and unless there is something special in the rules which justifies a contrary inference, the rules applicable to an application or appeal would be rules which are in force at the time when the appeal or the application is filed. It has been held in numerous cases that a statute of limitation is retrospective in its operation and governs all proceedings from the moment of its enactment, even though the cause of action might have accrued before the Act came into existence: vide *Soni Ram v. Kanhaiya Lal* [1913] 35 All. 227

5. Although this was a case in which I might have granted leave if I had the power to extend the period, I reject the application because it is admittedly beyond time.