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(1940) 02 BOM CK 0012

In the Bombay High Court

Case No : Civil Application No. 771 of 1939 and S.A. Stamp No. 4389 of 1939

Balappa Tammanna Tammannavar — APPELLANT

Vs

Dyamappa Bhusappa — RESPONDENT

Date of Decision : 06-02-1940

Acts Referred:
Civil Procedure Code, 1908 (CPC) — Order 20 Rule 7
Limitation Act, 1908 — Section 12

Citation : AIR 1940 Bom 415 : (1940) 42 BOMLR 872

Hon'ble Judges : Sen, J;John Beaumont, J

Bench : Division Bench

Judgement

John Beaumont, Kt., C.J.—The only question in this application is whether the appeal of the applicant is in time. The judgment appealed from was pronounced on June 1 and the decree was signed on June 15. On August 28 the applicant applied for a copy of the decree, and a copy was supplied to him on September 5. He filed his appeal on September 13. The time allowed for filing an appeal under Article 156 of the Indian Limitation Act is, ninety days from the date of the decree, and under Order XX, Rule 7, of the Civil Procedure Code, the date of the decree is the date on which the judgment was pronounced, so that the applicant had ninety days from June 1. That would expire on September 1 or thereabouts, and he filed his appeal, as I said, on September 13. But u/s 12 of the Indian Limitation Act, the time requisite for obtaining a copy of the decree is to be excluded from the ninety days. It has been held by the Privy Council that " the time requisite" means the time properly required and not the time actually required. Here there may have been some delay in applying for the copy, of. the decree, but the appeal was filed very shortly after the application for the copy; so that the actual delay in applying for the copy of the decree is not very material. It seems to me quite clear that the applicant was entitled to a reasonable time to apply for a copy. He must have known that the decree would not be drawn up for a few days, and until it was drawn up, he could not get a copy of it. Moreover, he was entitled to consult his pleader as to whether a copy

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was necessary, whether in any event there was likely to be an appeal and so forth. A party is entitled to some time to make up his mind whether a copy of the decree is required. Here, if we exclude the time between the date when the decree was pronounced and the date when it was signed, which is only fourteen days, the appeal is within time. In my opinion, clearly that was time which was requisite, that is to say, properly required for obtaining a copy of the decree.

2. I think, therefore, the appeal was in time. There will be no order as to costs.

Sen, J.

3. I agree.

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