
(1906) 08 MAD CK 0002
In the Madras High Court

Cheruvath Parkuru Thalangal Bappu

APPELLANT

Vs

Neroth Parkuru Thalangal Kanaran and Others

RESPONDENT

Date of Decision : 17-08-1906

Acts Referred:

Citation : (1907) ILR (Mad) 30 : (1906) 16 MLJ 548

Judgement

1. Under Clause 5 of Article 179 of the Limitation Act time begins to run from the date of issuing a notice u/s 248 of the CPC but there has been a difference of opinion in the other High Courts as to what should be considered the date of issuing notice, and the point does not appear to have as yet arisen in this Court. In Hari Ganesh v. Yamunabai I.L.R.(1897) B. 35 where the Court had ordered notice to issue, but no notice had in fact been issued because batta had not been paid, it was held that time did not begin to run from the date of the order of the Court directing notice to issue in that particular case as the clause only applies ""where the notice next hereinafter mentioned has been issued,"" and here it had not in fact been issued. The Court, however, proceeded to observe that it might be that where the notice had been issued, the date of issue would be the date on which the issue was ordered by the Court, as had been ruled in Udit Narain v. Ram Partab Singh (1881) Weekly Notes, Allahabad, 120. If, however, the order directing the notice to issue does not of itself constitute an issue of notice within the meaning of the first part of the clause, we do not see how it can properly be taken as an issuing of notice within the meaning of the second part of the clause for the purpose of fixing the date of issuing the notice, as the words ""issue of notice"" must have the same meaning assigned to them in both parts of the clause. The Bombay High

Court, however, without questioning the ruling in Hari Ganesh v. Yamunabai I.L.R(1897) B. 35, ruled obiter in Damodar v. Sonaji I.L.R(1903) B.

622 and expressly in Govind v. Dada I.L.R(1904)B. 416 that the date of issuing notice in the second part of the clause is the date of the order

directing issue.

2. On the other hand the Calcutta High Court has held in Kadaressur Sen Baboor v. Mohim Chandra Chakravarti (1902) 6 C.W.N. 656 and

again in the present year in Ratan Chand Oswal v. Deb Nath Barua (1906) 10 C.W.N.303 that time begins to run from the date of the actual

issue"" of the notice, though in the latter case Par giber J., expressed some doubt in defence of the Bombay rulings. In this conflict of authority, we

are on the whole of opinion that the Calcutta view is correct and should be followed. If the Legislature had intended that time should run from the

date of the order directing notice to issue instead of from the date of actual issue, nothing would have been easier than to say so as in other articles

such as in Articles 160A, 162 and 173. It is said, however, that the order directing notice is a judicial act and the actual issue of notice is a

ministerial act. Even so, we know of no principle of construction and have not been referred to any which would authorise us to treat the date of

the order directing notice as the date of issuing fee notice whereas the actual issue of the notice does not usually take place for some days after the

order directing the issue. To so hold in our opinion, would be to resort to a legal fiction, and this we are not authorised to do. In the present case

the notice admittedly was actually issued after January 7th, and the present petition, therefore, is not barred.

3. We overrule the judgments of the Court below and remand the case to the Munsif's Court for disposal according to law and allow the appeal

with costs throughout.