

(1934) 04 PAT CK 0021
In the Patna High Court

Dhanna Mistry

APPELLANT

Vs

Bengal Nagpur Railway Co., Ltd.

RESPONDENT

Date of Decision : 17-04-1934

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 110
Limitation Act, 1963 — Section 12, 4

Citation : AIR 1934 Patna 361 : 151 Ind. Cas. 380

Hon'ble Judges : Courtney-Terrell, C.J; Macpherson, J

Bench : Division Bench

Judgement

1. These are applications for the certificate of the Court that the proposed appeals to His Majesty in Council fulfil the requirements of Section 110, Civil Procedure Code. We have already granted the required certificates both for the appeal and the counter-appeal in each case. We were of opinion that the value of the subject-matter in dispute was in each case above Rs. 10,003 and that the decree of this Court was not a decree of affirmance. The substantial point for decision was as to whether the appeals and cross-appeals were in time and in the event of their not being in time whether and extension u/s 4, Limitation Act, could properly be allowed. It was frankly conceded on behalf of the appellant that the appeals could only be considered in time if a certain decision of this Court in the case of Ramcharan Shukul and Another Vs. Sri Thakurjee Mandil Darkadhis, , was correct. It was also conceded that the decision in that case had entirely changed the practice which had hitherto prevailed in this Court and it was contended that it was binding upon us. In that case the Stamp Reporter had reported that the period of limitation of 90 days had been exceeded and that the appeal was out of time. On this report the matter came before a Division Bench before notice of the appeal had issued to the defendants and the appellants alone appeared. The decision was of a preliminary nature only for it is clear that at the actual hearing of the appeal it would be open to the respondent to take the same point against that had been taken by the Stamp Reporter notwithstanding the former decision of the Court. The decision, therefore, was ex

parte and of preliminary nature and we do not consider that it has any binding force on us who have heard both the appellant and the respondent in the case before us. The point for decision concerns the computation of the period of limitation having regard to Section 4 and 12, Limitation Act, and turns upon the true construction to be put upon Section 4 which runs as follows:

Where the period of limitation prescribed for any suit, appeal or application expires on a day when the Court is closed, the suit appeal or application may be instituted, preferred or made on the day that the Court re-opens.

2. The learned Judge who heard the case to which I have referred construed the section in the following manner; they decided that the period of 90 days mentioned in Act. 179, Limitation Act, should first be considered. If that period of 90 days expired during the vacation then they held that the appeal must be instituted on the day when the Court re-opened and to such extension of the period of 90 days as resulted, there should be added such excluded period as is prescribed by Section 12 of the Act. The view which had up to that time prevailed was that the period prescribed by the article should first be subjected to the correction prescribed by Section 12 if the circumstances of the case justified such correction and then if the end of such corrected period fell within the vacation Section 4 might be applied and the appeal must then be lodged upon the day on which the vacation came to an end and the Court re-opened. It is to be noted that the report of the decision of the learned Judges in the case cited gives no indication that either the former practice or the wording of Section 4 was brought to their attention. In our opinion "the period of limitation prescribed for any suit appeal or application" being in the singular refers to the period prescribed by the Act having regard to the general application of the article appropriate to the particular class of suit, appeal or application subject to the corrections u/s 12 appropriate to the particular suit, appeal or application in question, and it contemplates the performance of an act which would otherwise have been performed at the end of that period being performed on the opening day of the term next following and not on any subsequent day. The learned Judges, however, in the case reported impliedly construed the opening words of the section as referring not to the particular suit, appeal or application but to the period prescribed by the article for suits, appeals or applications generally. But the words "the period of limitation," and the word "any" and the final words in our opinion prevent such a construction.

3. The facts of the appeal No. 23 of 1953 are as follows: On March 15, 1933, judgment delivered. Now by Order XX. Rule 7, Civil Procedure Code, the decree though drawn up later bears the date of the judgment and time began to run against the appellant from that date. On March 30, the appellant applied for a copy of the decree. On August 1, the decree was signed. On August 16, the copy of the decree was ready. The holding of the appeal and the application for the certificate did not take place until November 15. Taking a period of 90 days of the judgment we reach June 13, which fell in the long vacation. Applying the

principle newly established by the decision above referred to, the appellant considered that "the period of limitation prescribed" did not terminate until July 10, on which day the Court reopened. He then sought to add to this period the period involved in obtaining a copy of the decree. He had made application for copy on March 30, and he was unable to obtain the copy until August 16. This is a period 139 days and 139 days from July 10, brings us to November 26, and his appeal having been lodged on November 25, he says that he is in time. But as we have pointed out this calculation was erroneous. The period prescribed within the meaning of Section 4 of the Act means the period of 90 days plus the period of 139 days occupied in obtaining a copy of the decree.

4. This makes a total of 229 days. 229 days forward of counting from March 26, brings us to October 31. The appeal having been lodged on November 15, was therefore out of time. It is true that the appellant seeks the further benefit; of the time taken in obtaining a copy of the judgment but it is noticeable that he did not make his application for copy of the judgment until September 8, notwithstanding that the judgment had been delivered on March 15, and whether or not he could have obtained copies of the decree he certainly could have obtained copies of the judgment at a very much earlier date. The copy of the judgment was not delivered until September 20, and he seeks to add to the final date October 31, this extra period of 13 days. The time occupied in obtaining the copy of the judgment was clearly not "requisite" within the meaning of Section 12. But in any case this would only bring us at the latest to November 13, and he thus is still out of time giving him the maximum allowance possible in both cases. But for reasons into which it is unnecessary to go for the purposes of this judgment we were satisfied at the hearing upon the facts disclosed in the affidavit that there was sufficient cause for granting an extension sufficient to bring his appeal within time.

5. The same conditions with minor variations in the matter of dates apply to P. C. A. No. 25 of 1933. In the matter of the appeal by the respondent they also were out of time but we were satisfied on the facts set forth in the respondent's affidavits that they should also be given an extension of time for lodging their appeal. The object of this judgment has been to correct the erroneous practice in the matter calculating time which was inaugurated by the case to which we have referred.