

(1898) 08 CAL CK 0013

In the Calcutta High Court

Case No : Appeal from Appellate Decree No. 801 of 1897

Dulali Bewa and Another

APPELLANT

Vs

Saroda Kinkar Paulit and Others and Bartu Pali and Another

RESPONDENT

Date of Decision : 02-08-1898

Acts Referred:

Citation : (1898) 08 CAL CK 0013

Judgement

1. In our opinion this case must go back to the learned District Judge to be dealt with on the merits. It appears that the decree of the Subordinate Judge was delivered on the 3rd December 1896 and signed on the following day, and on the 10th December an application was made by the present Appellant for a copy of the decree and judgment. With the application he appears to have filed a number of folios but not the number that was found afterwards to be required for the purpose. On the 11th December, the clerk, whose business it was to ascertain the amount of Court-fee stamp payable for the copy asked for and the number of folios required for its preparation, made a report that, instead of 21 folios, only 12 folios had been put in, and that the amount of stamp required was Re. 1-8. The pleader for the Appellant has made an affidavit in which he states that he got the information respecting the deficiency on the 12th December 1896 on which date he supplied the necessary folios and the stamps. The copies were ready for delivery on the 16th December, and the memorandum of appeal was put in on the 9th January 1897, in other words, 37 days after the decree. The Appellant claimed a deduction of 7 days, namely, from the 10th to the 16th December. The Respondent before the learned District Judge contended that the only deduction the Appellant was entitled to was 5 days from the 12th to the 16th of December, and the learned Judge has given effect to this objection, and held that the Appellant before him who is the Appellant before us was in laches and in that view he has thrown out the appeal. He has referred to the case of Gungadas Dey v. Ranvjoy Dey I. L. R. 12 Cal. 30 (1885), which, as we pointed out in a preceding case, proceeded upon C. O. No. 4, dated 14th February 1874. The order, now in force, is Rule 6, dated 5th December 1895, and, in that Rule,

we find the following provisions relating to the preparation of copies and the requirements to be fulfilled on the part of the applicant for copies of decrees and judgments. Rule.4A. runs as follows:--

Every such application shall be numbered consecutively as received, and it shall be the duty of the officer to whom the requisition is delivered, at once, if possible, or during the same day, or not later than the following day, to ascertain the amount of Court-fee stamps payable for the copy asked for and the number of folios required for its preparation, and at the same time to inform the applicant thereof.

Rule 4B.--"When such information cannot be given at once, the officer shall inform the applicant when he may expect to obtain it. The counter-foil of the application shall be returned to the applicant, and it shall be his duty to attend at the time named.

Rule 4C.--" The amount of Court-fee stamps and the number of folios required shall always be on the back of the requisition, and the applicant shall be required to put his signature thereto as an acknowledgment of his having received the information.

Rule 4D.--" The applicant shall further be informed that his application will not be considered complete, and that the preparation of the copy will not be commenced until he has supplied in full the Court-fee stamps and the number of folios stated to be required.

2. It is clear, therefore, from these rules that it was the duty of the officer before whom the requisition was made for the copy, to furnish the Applicant with the necessary information regarding the number of folios and the requisite stamp-fee. That information, according to the affidavit of the Appellant's pleader, was given on the 12th December when the Appellant complied with the requirements of the rule. We think that the learned Judge was in error in throwing out the Appellant's appeal on the ground that it was out of time. He might certainly, under the circumstances, have exercised his discretion under sec. 5 of the Limitation Act, as was pointed out in the case of *Sheogobind v. Ablaki* I. L. R. 12 All. 105 (1890), and, as we understand, in another case of *Huro Chandra Roy v. Surnamoyi* I. L. R. 13 Cal. 266 (1886), and having regard to the fact that the Appellant was only asking for a deduction of 2 days, might have held the appeal as brought within time. We set aside the decree of the learned District Judge and send the case back to be dealt with according to law, but, under the circumstances of the case, we make no order as to costs. The Appellant will get back the Court-fee paid by him on his memorandum of appeal.