

(1934) 12 AHC CK 0053
In the Allahabad High Court

Gaekwar, Baroda State Railway Baroda	APPELLANT
Vs	
Mohammad Habibullah and Others	RESPONDENT

Date of Decision : 03-12-1934

Acts Referred:

Limitation Act, 1963 — Section 12(2)

Citation : AIR 1935 All 258 : 157 Ind. Cas. 170

Hon'ble Judges : Kendall, J

Bench : Division Bench

Final Decision : Allowed

Judgement

Kendall, J.—This is an application for leave to appeal to His Majesty in Council, which has been opposed on the ground that it is barred by limitation. The decree against which the appeal has been made was dated 22nd December 1933, and the present application is dated 6th April 1934. The report of the office on it is that it is fifteen days beyond time. Mr. P.L. Banerji, for the appellant, relies on the provisions of Sub-section (2), Section 12, Limitation Act, and points to the fact that the period between 22nd January 1934, when he applied for a copy of the decree, until 20th April 1934 when the copy of the decree was ready would be excluded in computing the period of limitation. Under Sub-section (2), Section 12, Limitation Act:

in computing the period of limitation prescribed for an appeal for leave to appeal and an application for a review of judgment, the day on which the, judgment complained of was pronounced end the time requisite for obtaining a copy of the decree, sentence or order appealed from or sought to be reviewed shall be excluded

and their Lordships of the Privy Council in Jijibhoy N. Surety v. T.S. Chettyar 1928 P.C. 103 have remarked Section 12 makes no reference to the CPC or to any other Act. It does not say why the time is to be excluded but simply enacts it as a positive direction.

2. The application is opposed on the ground that this period cannot be excluded because the time was not requisite for obtaining a copy of the decree. The reason given for this argument is that in this case a copy of the decree was not requisite, and that this is shown by the fact that the application for leave to appeal was filed on 6th April, whereas the copy of the decree was not obtained until 20th April. It is pointed out that in the Privy Council judgment to which we have referred their Lordships have remarked:

If indeed it could be shown that in some particular class of cases there could be no object in obtaining the two documents, an argument might be offered that no time could be requisite for obtaining something not requisite.

3. As the dates given above show that the application for leave to appeal was filed before the copy was supplied it is argued that the copy of the decree was not requisite, and that the time cannot be excluded.

4. The paragraph in which the remarks relied on by the respondent occur sets forth an argument that might be used, in a particular class of cases and their Lordships proceed to demolish it. so far at any rate as the particular case before them is concerned, Mr. Chaturvedi, for the respondent however tried to show that the present case is one in which the circumstances are peculiar and that as a matter of fact the copy of the decree was not requisite. The circumstances, as we have been shown from the record, are that on 22nd January the appellant applied for a copy both of the decree and the judgment. The copy of the judgment was obtained on 10th March, and as it happened, that provided sufficient material for the completion of the application for leave to appeal. When the application for both copies was made however the appellant was actually in need of the information which had to be provided by either the copy of the decree or the copy of the judgment, and therefore it is impossible to say that on the date when the application for copies was made either of those copies was not requisite. It was only an accident, so to speak, that the necessary information was supplied by the copy of the judgment and not by the copy of the decree. It has been argued by Mr. Chaturvedi that as the information was actually supplied by the copy of the judgment, the copy of the decree cannot have been necessary. However true this may be of the period after 10th March when the copy of the judgment had been obtained, it has no application to the period from 22nd January to 10th March. Even if this lesser period were to be excluded, the application would be within time. We are however of opinion that the wording of Sub-clause (2), Section 12 is quite sufficient to enable the appellant to exclude the whole of the time from the date when the application was made until the date when the copy of the decree was ready.

5. As this point might be taken in appeal, we direct that copies of both the judgment and the decree be filed. For the reasons given above we hold that the application is within time. The valuation of the suit in the Court below being above Rs. 10,000 and the valuation of the proposed appeal to His Majesty in Council being also above Rs. 10,000 and the Courts in India having differed, the

case satisfies the requirements of law u/s 110, Civil P.C., and we certify accordingly.