

(1925) 04 MAD CK 0007
In the Madras High Court

In Re: The Secretary of State for India in Council

Date of Decision : 16-04-1925

Acts Referred:

Limitation Act, 1908 — Section 12

Citation : 90 Ind. Cas. 601

Hon'ble Judges : Wallace, J;Devadoss, J

Bench : Division Bench

Judgement

1. The question for decision is whether in the case of an application for leave to appeal to the Privy Council time requisite for obtaining a copy of the judgment appealed against may be excluded in calculating limitation.

2. Section 12 of the Indian Limitation Act is now made applicable by the Privy Council Rules to such applications, but the difficulty is that while

Sub-section (2) applies in terms to "an application for leave to appeal," Sub-section (3) does not. But we think that, though Sub-section (3) does

not in terms apply the language used in it really covers the present case. Under Sub-section (2) when an application for leave to appeal is put in,

the time requisite for obtaining "a copy of the decree appealed from" may be deducted. Here the phrase quoted really implies "a copy of the

decree sought to be appealed from" as the decree cannot strictly be "appealed from" until leave to appeal has been given. There is no reason why

the phrase "decree appealed from" when used in Sub-section (3) should be given any different interpretation. Sub-section (3), therefore, in the

case of an application for leave to appeal really means "when a decree is sought to be appealed from...." That is the present case and time requisite

for obtaining a copy of the judgment may, therefore, be excluded.

3. That position is also very reasonable, since a proper application for leave to

appeal cannot be drawn up unless the party or his Pleader has before him a copy of the judgment.

4. Authority on the point is scant. Mahabir Prasad Tewari v. Jamina Singh 66 Ind. Cas. 88 : 1 Pat. 429 : 3 P.L.T. 289 : (1922) Pat. 193 (1922)

AIR (Pat.) 255 is direct authority, though the reasons given are not those we have given. The case of Anderson v. Periasami 15 M. 169 : 5 Ind.

Dec. 467 was under the old Section 12 in which applications were limited to applications to appeal in forma pauperis, and, therefore, Section 12

could not be then called in aid at all.

5. We rule that time requisite for obtaining copy of judgment should be excluded.