
(1918) 02 BOM CK 0009
In the Bombay High Court
Case No : Second Appeal No. 280 of 1917

Nilkanth Laxman Joshi

APPELLANT

Vs

Ragho Mahadu Pavale

RESPONDENT

Date of Decision : 08-02-1918

Acts Referred:

Citation : (1918) 20 BOMLR 351 : 45 Ind. Cas. 559

Hon'ble Judges : Heaton, J;Beaman, J

Bench : Division Bench

Judgement

Beaman, J.—The application for execution would undoubtedly be in time if we take the date of the issue of the notice upon the last application to be in fact the date on which it was issued and not the date on which the Court ordered it to be issued. There was a conflict of authority under the former Indian Limitation Act, this Court holding that the word "issuing" in the Article meant, not the actual sending out of the notice, but the making of the order that it should on some future day be sent out. The Calcutta and Madras High Courts took the opposite view. The Indian Limitation Act was accordingly amended and the word "issue" was substituted for "issuing". I entertain no doubt but that the intention of that amendment was to give effect to the view held by the Calcutta and Madras High Courts. As the Article now stands, I do not see how it is capable of any other construction. Time is said to run in all cases in which notices have been issued from the issue of the notice. Taking language in its natural sense and assuming the Legislature to mean what it says, I cannot read into that the strained construction which was put upon the Article in the former Indian Limitation Act, a construction made possible, if indeed it was made possible, only by treating the word "issuing" as a continuing verb dating back to the time from which the process was started by the Court. By a parity of reasoning, it appears to me that it would be as permissible to say that the date of a man's hanging was not the day on which he was actually hanged but the day on which the Court sentenced him to be hanged. I must confess for my own part that I am always strongly averse from putting an unnatural construction upon language which seems to me

to have a perfectly plain and natural meaning.

2. In my opinion, there can be no doubt but that the present application is within time since it is within three years from the date on which notice was actually issued upon the last application.

3. I would, therefore, reverse the order of the Court below, direct that this application be again taken on the file and proceeded with according to law.

Heaton, J.

4. I concur.