

(1916) 03 AHC CK 0001
In the Allahabad High Court

Ram Autar Shukul

APPELLANT

Vs

Bhagelu Sahai and Another

RESPONDENT

Date of Decision : 24-03-1916

Acts Referred:

Limitation Act, 1963 — Section 12

Citation : AIR 1917 All 323 : 34 Ind. Cas. 204

Hon'ble Judges : Walsh, J

Bench : Single Bench

Judgement

Walsh, J.—In this case the present appellant had 30 days within which to deposit a certain sum of money from the date of the decree in the suit becoming final. Such decree was made on the 18th of August. The other side, being dissatisfied with the decision, applied to the Court for a copy of the decree and judgment in order to enable them to appeal. At that time in such a hurry were they to appeal that the decree against which they proposed to appeal was not even ready. On 22nd August a copy of the judgment was issued to them. On 31st August a copy of the decree was issued to them. There is no provision in the Code or in the rules as to when a decree becomes final. In my opinion the real question for determination in this appeal is, what is the meaning of the word final in the original decree of the Munsif. Under Article 152 of the Limitation Act the respondents before me, that is, the defendants in the suit, had in any case 30 days to appeal from the decree. That 30 days expired at the end of 18th September, but u/s 12 of the Limitation Act they also had the time requisite for obtaining a copy of the decree. There is no definition of the time requisite;" but it is conceded that it must be defined in each case according to the circumstances of the particular case. In this case it is obvious, and has not been disputed, that the time requisite was 13 days, namely, the interval actually occupied, that is to say, from 18th August to 31st August. The defendants, therefore, had 43 days in all to appeal from the decree of 18th August. They had that period as a matter of absolute right, and it is admitted on their behalf that during that period the decree could not become, as against them, "final" within the meaning of the

decree of 18th August. That 43 days took them into the vacation, the result of which was that their right of appeal subsisted until 23rd October when the Court re-opened. The appellant in this case deposited or tendered the required sum on 28th October, that is to say, well within 30 days of the expiration of his opponent's right to appeal. By so doing in my opinion he clearly complied with the terms of the decree. It is true that his own right of appeal had been extinguished, but the intention of the Munsif's order clearly was to give him 30 days within which to find and pay the money after the decree itself had been final, in the sense that nobody could appeal against it and the rights of the parties were finally determined. I find it difficult to understand how it can be justly or reasonably held as against the plaintiff that he was required to pay the money within 30 days of the expiration of his own right of appeal. To hold that would be, in my opinion, to defeat the clear intention of the Munsif's order. The result of so holding would, it seems to me, be unjust in the highest degree, because at the time when, according to the contention of the other side, the appellant ought to make up his mind as to the payment of the money he could not possibly know whether the defendants would prosecute their appeal or not. I am, however, content to base my opinion upon one simple ground. The respondents say that they had a right to appeal on 23rd October because the decree was not then final. They say that the appellant had lost his right to deposit the money because the decree was final on 18th September. How a decree can be held to be both final and not final on the same day beats me altogether. Unfortunately the authorities on this point have got in a tangle. If the authorities relied on in the lower Appellate Court were the only authorities on the point, I should be bound, however unwillingly, to follow them. In my opinion the lower Appellate Court having those authorities before it had practically no alternative but to hold itself bound by them. They can, however, be explained away as easily as the contention on behalf of the respondents. In a case which, so far as I know, is the earliest recorded instance in which this question was raised, *Shaikh Ewaz v. Mokuna Bibi* 1 A. 132, Mr. Justice Spankie and Mr. Justice Oldfield decided that a decision cannot be said to become final until the time for the last appeal allowed has expired, or if appealed, it has become final by the decree of the High Court. I agree entirely with that decision and propose to follow it. That was in February 1876. In November 1876 the then Chief Justice and Mr. Justice Oldfield* decided the other way. That decision may be justified on the equitable ground that the appellant who sought to deposit money had himself preferred the appeal which, he contended, prevented the decree from becoming final, and had himself withdrawn it. It is, therefore, distinguishable from the earlier case. The next case is reported as *Disa Singh v. Juala Singh A.W.N.* (1881) 166. It is practically indistinguishable from the present case. The Munsif originally took the view which, I think, is the right view, but the High Court overruled him, one of the Judges being Mr. Justice Oldfield who had been a party to both the previous decisions. No reasons are given in the judgment of the Court, which appears to have followed the latter of the two cases decided in 1876" to which I have referred. In doing so it overlooked the principle clearly laid

down in the earlier case and misapplied the exception to it created by the latter case. This fundamental error makes the decision of no value. I think it was wrongly decided and that the subsequent cases such as Karam Khan v. Nathan Khan A.W.N. (1883) 4 are probably attributable to it. It is an illustration of the recognised fact that once heresy creeps in unrecognised, it rapidly develops itself unless checked. In the presence of conflicting decisions upon a question of principle arrived at by the same Judge at different dates, I think I am at liberty to give effect to my own view, and I would be doing no public service if I adopt the course I originally proposed of referring the matter to another Bench. To my mind the point is almost too clear for argument. I allow the appeal, and reversing the decisions of both the Courts below, I send the case back to the first Court to enable the appellant to enforce the decree. The appellant must have his costs in all Courts, and the costs of this appeal on the higher scale.