

(1898) 12 CAL CK 0018
In the Calcutta High Court

Rani Venkata Ramaniam

APPELLANT

Vs

Kherode Mull

RESPONDENT

Date of Decision : 09-12-1898

Acts Referred:

Limitation Act, 1877 — Article 177, 5

Citation : 3 Ind. Cas. 400

Hon'ble Judges : O''Kinealy, J; Banerjee, J

Bench : Division Bench

Judgement

1. This is an application for leave to appeal to Her Majesty in Council.
2. It is not denied by the opposite party that all the formalities requisite for the filing of such an application have been complied with; but it is objected by them that it has been presented beyond the prescribed period. What we have to determine is whether or not the application can be received.
3. The application was presented in the Privy Council Department on the 4th October last, that is, more than six months from the date of the decree appealed against, and the applicant claims to have it dealt with as if it was made on the day that Court re-opened after the Dusserah vacation, namely, on the 21st of November last u/s 5 of the Limitation, Act (XV of 1877) read with article 177 of that Act.
4. It is objected by the learned Pleader for the other side that Section 5 of the Limitation Act does not apply to applications for leave to appeal to Her Majesty in Council, and the reasons given by him are two. He has argued, first, that the Code of 1882 had a special section giving the same time for the filing of appeals to Her Majesty in Council.; This section was not repealed until the passing of Section 57 of Act VII of 1888; and it is urged it must have had the effect of repealing the provision for the period of limitation contained in both Acts, viz., the Limitation Act. We think, however, that there is no express repeal of that provision and we are unable to hold that there was any repeal by implication.

5. The second point has really no force. Chapter XLV of the Code is headed "Of Appeals to the Queen in Council." Therefore, the present application is an application to appeal to Her Majesty in Council, although under the procedure adopted by our Court a final order for admission cannot be made on the application until it has gone through certain formalities, such as the obtaining of a certificate and the deposit of security, etc. But all these formalities are gone through on the original application, which does not cease to be an application for leave to appeal to Her Majesty in Council.

6. We, therefore, think that the applicant is entitled to have her application received and we direct that it be received and filed accordingly.

7. The applicant in this case being entitled to a certificate as of right, we also direct that a certificate be granted to her that the case is a fit one for appeal to Her Majesty in Council and that notice do issue.