

(1928) 09 CAL CK 0016
In the Calcutta High Court

Sambhu Nath Bandopadhyaya

APPELLANT

Vs

Gopi Lal Seal

RESPONDENT

Date of Decision : 05-09-1928

Acts Referred:

Citation : AIR 1929 Cal 734 : 121 Ind. Cas. 367

Hon'ble Judges : Rankin, C.J.; Mukerji, J

Bench : Full Bench

Judgement

Rankin, C.J.—This is an application that a memorandum of appeal be accepted and registered, the memorandum having been rejected by the office as being out of time. It appears that the decree was pronounced on 16th May 1928 in favour of the plaintiff. Now, on the next day, the plaintiff filed a requisition for drawing up the decree, so that the appellant defendant never became entitled or obliged to exercise the right of putting in another requisition for drawing up the decree. The right accrues to him only if the plaintiff for four days omits to file the requisition for drawing up the decree. The requisition for drawing up the decree having been filed on 17th May the drawing up of the decree proceeded in the ordinary course, with this exception that although the draft decree was issued on 22nd May 1928, the appellant did not return it approved until 5th June 1928. On 5th June, the defendant, for the first time, filed a requisition for obtaining an office copy of the decree. As to that, I may point out that the appellant's solicitor took a great risk, because, on the decisions of this Court, it would seem that time does not cease to count against him until he files a requisition for an office copy. The time prior to that was occupied in getting the decree drawn up. At the same time, it is perfectly true that until there is a decree there cannot be a copy of it and from 17th May until 5th June the time might very well be counted in the defendant's favour, had he only filed his requisition sooner. Assuming, for the sake of argument, that from 16th May till 5th June exhausts the whole 20 days, to which the defendant was entitled, it remains to consider whether there is any other time that must be charged against him. As a matter of fact, the memorandum of appeal was filed on the very day the office copy of the decree

was ready for delivery. The only way, therefore, in which the defendant can be out of time would be in respect of the period between 19th June, when the decree was sent to be ledgered and 9th July, when the decree was filed by the plaintiff. The plaintiff certainly did take unnecessary time, but the question is whether that can be charged against the defendant, whether he is not entitled to say that, as the requisition for drawing up the decree was filed by the plaintiff, the defendant was not called upon to interfere in the process of the drawing up of the decree. It cannot be doubted that, if the defendant had insisted upon the decree being filed, it might have been filed sooner than it was. At the same time, I see no negligence on the part of the defendant. Indeed, I am satisfied that the defendant was keeping watch and making enquiry at the office diligently. I have some doubt whether by making any casual enquiry at the office he would be able to ascertain what the cause of the delay was. I am, therefore, of opinion that no part of the time occupied by the plaintiff in getting the decree drawn up can be charged to the defendant for the present purpose. The last occasion on which this matter came under review was the case of Jijibhoy N. Surty v. T.S Chettyar AIR 1928 P.C. 103 and Lord Phillimore, in giving the judgment of the Board, said:

But for that time which is taken up by his opponent in drawing up the decree, or by the officials of the Court in preparing and issuing the two documents he

that is the appellant "is not responsible."

2. I do not mean to doubt for one moment the settled practice and the principle of this Court that a person cannot by merely filing a requisition for an office copy and failing to take steps to get the decree drawn up, become entitled to exclude the time that has been wasted. But in this case, I am of opinion that the defendant is not out of time and, if he is out of time, it is not on account of his negligence, and the time should be extended if necessary.

3. In these circumstances I think that the memorandum of appeal should be accepted and registered.

4. Costs of this application will be costs in the appeal.

Mukerji, J.

5. I agree.