
(1903) 04 MAD CK 0010
In the Madras High Court

Saminatha Aiyar		APPELLANT
	Vs	
Venkatasubba Aiyar		RESPONDENT

Date of Decision : 07-04-1903

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 2

Citation : (1904) ILR (Mad) 21 : (1903) 13 MLJ 300

Judgement

1. This is an appeal from an order rejecting an appeal on the ground that it was out of time, A preliminary objection has been taken that no appeal

lies as the order is not a decree as defined by Section 2 of the Civil Procedure Code. If we had to consider the point apart from authority, we

might have felt disposed to adopt the view put forward on behalf of the respondent. The balance of authority, however, is strongly against this

view. The precise point was decided against the respondent in Gulab Rai v. Mangli Lal ILR 7 A. 42 and Raghunatha Gopal v. Nilu Nathoji 8 ILR

9 B. 452 Ganga Dass Dey v. Ramjoy Dey ILR 12 C. 30. The principle of these decisions was applied by this Court in the cases of (Ayyanna v.

Nagabhooshanam ILR 16 M. 285 and Zemindar of Tuni v. Bennayya ILR 22 M. 155.

2. Having regard to these authorities we are not disposed to say that no appeal lies in the present case. The preliminary objection is overruled.

3. In this case judgment was delivered on December 22, 1900, the last day before the Christmas vacation at 4 P.M. when, according to the

practice of the Court, papers were not received. The appellant made his application for a copy of the Judgment on January 7th 1901, the day on

which the Court re-opened after the Christmas holidays, and presented his appeal on a day which would be in time if he is entitled to deduct the

period during which the Court was closed. His contention is that, in computing the period for appeal, the time during which the Court was closed should be deducted.

4. The contention on the other side is that inasmuch as no application for a copy of the judgment was made before the Court closed, the appellant is not entitled to have the period during which the Court remained closed deducted in the computation of time. The argument was that the words "requisite for obtaining a copy of the judgment" pre-suppose an application for the copy. There is nothing in the section itself to suggest that these words ought to be so construed, it is not impossible to conceive of cases where time may properly be deducted though the commencement of the period from which time is deducted precedes the actual application for a copy of the judgment. On the facts of the present case, we think it may be said that this is not one of those cases. For this reason, we think the appellant is entitled to deduct the period from December 23rd to January 6th, both days inclusive as such period, in the circumstances of the case, must be taken to be part of the time requisite for obtaining a copy of the judgment.

5. We must, therefore, set aside the order of the District Judge and direct him to receive the appeal and proceed with it according to law. The costs of this appeal will abide the event.