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**(1926) 12 BOM CK 0001**

**In the Bombay High Court**

**Case No : Civil application No. 664 of 1926**

Seshgiri Narayan Kamat

APPELLANT

Vs

Venkatesh Laxman Kamat

RESPONDENT

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**Date of Decision : 16-12-1926**

**Acts Referred:**

Civil Procedure Code, 1908 (CPC) — Order 47 Rule 1, 110  
Limitation Act, 1908 — Section 5

**Citation : AIR 1927 Bom 221 : (1927) 29 BOMLR 344 : 101 Ind. Cas. 432**

**Hon'ble Judges : Blackwell, J; Amberson Marten, J**

**Bench : Division Bench**

**Final Decision : Dismissed**

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## **Judgement**

Amberson Marten, Kt., C.J.—This is a partnership suit in which this Court gave judgment in second appeal on November 13, 1925, allowing the appeal and restoring the judgment of the trial Court with a certain variation.

2. On March 30, 1926, the present applicant applied for a review. This was rejected on July 19. Then on July 27, the present application for leave to appeal to the Privy Council was presented which was followed on August 9 by an application for leave to excuse the delay.

3. The argument presented to us on behalf of the petitioner was that the period during which he was prosecuting the application for review ought to be entirely deducted. But counsel for the respondents for the first time pointed out to us that even this would not by itself help the applicant, because even if that period was deducted, the applicant would still be out of time by some six or seven days. This is now conceded by counsel for the applicant. The office calculation is in effect accepted, namely, that the period from November 13, 1925, to July 27, 1926, would be 256 days. But out of that, 48 days would be deducted for applying for and obtaining certified copy of the judgment, which reduces the total to 208 days. A further 90 days ought also to be deducted, being the time normally allowed for applications for leave to appeal. This leaves a balance of

118 days. On the other hand, the time occupied for the review application was only 111 or 112 days, thus leaving six or seven days unaccounted for.

4. That being so, it is clear that the respondents have a valuable right in their favour, namely, that of limitation. And, as pointed out in *Karsondas Dharamsey v. Bai Gungabai* ILR (1905) 30 Bom. 329 the Court must be fully satisfied of the justice of the grounds on which it is sought to obtain an extension of the time for attacking the decree, and thus perhaps depriving the successful litigant of the advantages which he has obtained. That was a decision of Sir Lawrence Jenkins and Mr. Justice Batty.

5. Now, here there seems to us no sufficient grounds u/s 5 of the Indian Limitation Act or otherwise for excusing the delay that has taken place. The most that counsel for the appellants can say is that after the decision dismissing the application for review on July 19, 1926, he had to communicate with his client, and he had to obtain confirmation of the telegram sent by his client instructing him to apply for leave to appeal to the Privy Council. It seems to us that this is an insufficient explanation. He must have known that his time to apply for leave to appeal to the Privy Council was running out, and he should have been prepared in any event with an application to save limitation.

6. But, quite apart from that, there is a separate ground. The case has been presented to us almost on the lines as if a litigant was entitled as of right to deduct any period during which he has presented an application for review to the Court. In that respect *Nariman Rustomji Mehta Vs. Hasham Ismayal*, was relied on, and also the decision of the Privy Council in 22 CWN 169 (Privy Council) But, in our opinion, neither of those cases has any such wide application as is contended for by the applicant. On the contrary, the test laid down in *Pundlik v. Achut* ILR (1593) 18 Bom. 84 and *Ashanulla v. The Collector of Dacca* ILR (1888) Cal. 242 ought, we think, to be applied, namely, that the appellant is bound to satisfy the Court that there were sufficient circumstances existing in his case to account for the delay, and that the time taken in prosecuting the application for review ought not to be deducted in calculating the period of limitation, unless there is a reasonable ground for asking for a review. As stated in the head-note in *Ashanulla v. The Collector of Dacca* :-

The mere presentation of an application for review, where it is not shown that the grounds therefore are reasonable and proper, is not a sufficient reason for admitting an appeal after the period of limitation prescribed for such appeal has" passed.

7. Now, Order XLVII, Rule 1, of the Civil Procedure Code, lays down the limitations under which a review can be presented. And the decision of their Lordships of the Privy Council in AIR 1922 112 (Privy Council) emphasizes the duty of the Court hearing the review in that respect. In the present case, it is perfectly clear that there was no new and important matter or evidence which was discovered, nor was there any mistake or error apparent on the face of the

record. So that the only reason put forward would be any other sufficient reason within the meaning of Rule 1. Now it was pointed out by the Judicial Committee that "a Court hearing an application for the review of a decree on appeal has no jurisdiction to order a review because it is of opinion that a different conclusion of law should have been arrived at."

8. In the present case, there was a business carried on in the firm's name. Two persons died in 1914 and 1915, and no doubt, technically on their respective deaths, the partnership, which was continued by the surviving partners, would constitute a new partnership. All that is set out in the pleadings of the plaintiff at length. This Court has held that there was a continuation of the business after the death of the second partner in 1915, and consequently, the onus was on the defendants to show that there was a dissolution but as that onus was not satisfied, the ordinary partnership accounts must be taken. The application for review that was presented to this Court, so it seems to me, in no way comes within Order XLVII, Rule 1, nor within the decision of the Privy Council referred to above. At the utmost the grounds put forward would be grounds to urge on appeal to the Privy Council.

9. It seems to me, therefore, that the appellant has not satisfied us that he was really prosecuting this review in good faith and on reasonable and proper grounds. In a case of this sort, one can quite see that a litigant, in the position of the defendants, may desire to put off the evil day of accounting and payment, and that every delay, which the law permits, or even does not permit, is likely to be taken advantage of by such a litigant. To my mind, that class of litigant ought not to be encouraged, and I see no reason in the present case to exercise any discretion, so far as we have a discretion, in his favour in that respect. So, personally, I would hold that in any event the time occupied by the review application ought not to be excused under all the circumstances of this particular case.

10. That being so, in my judgment, this application for leave to excuse the delay ought to be dismissed.

11. It is, therefore, unnecessary to say anything on the merits of the application. Though we thought it right to hear Mr. Nilkant on that point, we have not thought it necessary to hear Mr. Murdeshwar in reply. As regards that, a point would arise as to whether the subject-matter of the suit amounted to Rs. 10,000 within the meaning of Section 110 of the Civil Procedure Code. The contention of Mr. Nilkant is that the test is the detriment to be suffered by the defendants, and that although the plaintiff himself may not recover more than Rs. 4,000, still there were several other sharers in the partnership, and the result of the accounts ordered by this Court might be that they would be entitled to recover other large sums from his clients, the defendants, which in the aggregate would amount to Rs. 10,000

12. On the other hand, Mr. Murdeshwar cited to us the case of *Hirjibhai v.*

Jamshedji (1913) 15 Bom. L.R. 1021 to show that when you have a case brought in the Court of the Second Class Subordinate Judge, then it must be taken that the Subordinate Judge could pass a decree only up to Rs. 5,000. However, we do not propose to express any opinion on that interesting point. I only mention it to show that it has been not overlooked.

13. I would, therefore, dismiss the application for excusing the delay with costs, and, consequently, I would also dismiss the petition itself with costs.

Blackwell, J.

14. I agree.