

(1925) 12 AHC CK 0037
In the Allahabad High Court

Wilayati Begum and Another

APPELLANT

Vs

Firm Jhandu Mal-Mithu Lal

RESPONDENT

Date of Decision : 18-12-1925

Acts Referred:

Limitation Act, 1963 — Section 12(3)
Limitation Act, 1963 — Section 12(3)
Limitation Act, 1963 — Section 12(3)

Citation : AIR 1926 All 286

Final Decision : Dismissed

Judgement

1. A question of limitation arises in connexion with this application for leave to appeal to His Majesty in Council. The judgment of this Court was delivered on March 1925, and admittedly the application for leave to appeal was not presented till 20th October 1925.

2. Certain reasons are given in explanation of the delay. It is said that some time had to be taken for the purpose of obtaining a copy of the decree of this Court, and further it is said that sometime was taken for the purpose of obtaining a copy of this Court's judgment.

3. It is argued on behalf of the applicant that if both the periods just referred to can be taken into consideration and allowed, then the application for leave to appeal is within time. It is conceded, however, that if Sub-section (3), Section 12, Lim. Act, does not apply to the case now before us, then it must be held that the application for leave is beyond time.

4. Section 12, Lim. Act, provides for exclusion of time which is consumed in certain legal proceedings which are obligatory. In Sub-section (2), Section 12 it is provided that in computing the period of limitation prescribed for an appeal, an application for leave to appeal, and an application for a review of judgment, the day on which the judgment complained of was pronounced and the time requisite for obtaining a copy of the decree, sentence or order appealed from or sought to be reviewed, shall be excluded. Clearly this sub-section provides in the cases

mentioned for the exclusion of the time which is necessary for obtaining, copies both of the judgment and of the decree.

5. When we come, however, to Sub-section (3) we find it laid down as follows: "Where a decree is appealed from or sought to be reviewed, the time requisite for obtaining a copy of the judgment on which it is founded shall also be excluded." The question is whether Sub-section (3), Section 12 applies to a Case of this kind, namely an application for leave to appeal to His Majesty in Council. In our opinion it does not. To begin with, the language of Sub-section (3), when contrasted with Sub-section (2), clearly contemplates the exclusion from the scope of Sub-section (3) of the case of an application for leave to appeal, and further it is to be noted that for the purpose of making an application for leave to appeal to His Majesty in Council, the rules of this Court do not make it necessary that the applicant shall at the time of filing his application for leave file also a copy of the judgment on which the decree is founded. That being so it seems to us that for the reasons just given, we must hold that the present application is beyond time. The applicant is not entitled to exclude that time which he took in obtaining a copy of the judgment of this Court. The application is therefore dismissed with costs including fees on the higher scale.