

(1878) 04 AHC CK 0010

Allahabad High Court

Case No: None

Narain Das and
Others

APPELLANT

Vs

Jawahir Lal and Others

RESPONDENT

Date of Decision: April 24, 1878

Citation: (1875) ILR (All) 644

Hon'ble Judges: Robert Stuart, C.J; Spankie, J

Bench: Division Bench

Final Decision: Allowed

Judgement

Robert Stuart, C.J.

An application for leave to appeal to Her Majesty in Council having been tiled, the question we have to consider is whether the application is within the time (six months) provided by the Procedure Code, Act X of 1877, and by the Limitation Act, XV of 1877. Schedule ii, No. 177, or whether it is beyond time. The limitation in such cases was previously that provided by Section 599^{*} of the Procedure Code, but that section is repealed by the present Limitation Act XV of 1877, and without any substitute for it other than that contained in No. 177 of Schedule ii. The date of the decree was the 20th August 1877, and if nothing could be shown to have interrupted the running of the limitation period, the six months expired on the 20th February 1878. But the present application for leave to appeal to Her Majesty in Council was not filed till the 27th February, that is, as reported by the office, it was seven days beyond time. It was not explained why this application had been delayed till the last, moment, till, indeed, after the expiry of the six months, but Mr. Colvin stated that the defendant was now anxious to appeal to the Privy Council, and he argued that he is entitled to seven days beyond the 20th February u/s 12 of the Limitation Act XV of 1877, inasmuch as he is entitled to have reckoned the time requisite for obtaining a copy of the judgment appealed against, as provided by that section. It appears that the defendant applied for a copy of the judgment on the

22nd September, and that it was ready for him on the 28th, although it was stated that he did not actually receive it till the 29th, but in either case, whether the 28th or 29th, he would be entitled to add seven additional days to the period, and his application would be within time. In fact, the seven days would bring him to the 27th February, the very day on which the application for leave to appeal to Her Majesty's Privy Council was made. Mr. Colvin enforced his argument by referring to Section 4 of the Limitation Act, which is in these terms: "Subject to the provision, contained in Sections 5 to 25 (inclusive), every suit instituted, appeal presented, and application made, after the period of limitation prescribed therefore by the second schedule hereto annexed, shall be dismissed, although limitation has not been set up as a defence": Section 12 is thus included among those sections. The portion of Section 12 of the Limitation Act relied on is as follows: "'Where a decree is appealed against or sought to be reviewed, the time requisite for obtaining a copy of the judgment, on which it is founded shall also be excluded.'" What is the meaning here of the expression "where a decree is appealed against?" In the sections of the Code of Procedure relating to appeals to the Privy Council, there is a clear distinction between applications or petitions to appeal and appeals themselves, i.e., admitted appeals, and if this portion of Section 12 of the Limitation Act be taken literally, it applies to an appeal alone and not to an application. But if that be so, where is the necessity for a copy of the judgment? That document can only be required for the preparation of the reasons of appeal which are only appropriate to an application, and are evidently not wanted in the case of an admitted appeal. The rather unfortunate and ambiguous expression, therefore, "where a decree is appealed against," must, I think, be understood to mean a proceeding in the way of appeal for which a copy of the judgment is required. It plainly is not required for an admitted appeal, while it is as plainly necessary to an application to appeal. Notwithstanding therefore the obscure and doubtful expression in this part of Section 12 of the Limitation Act, "where a decree is appealed against," I think we must understand by it an application, or proceeding in the nature of an application, to appeal, and therefore if this part of Section 12 applies to appeals to the Privy Council, Mr. Colvin's contention is right, and his application within time.

2. But I am of opinion that this provision of Section 12 of the Limitation Act does not apply to Privy Council appeals. As for Section 4, even if relevant to some extent to the present case, it does not follow that it compels us to apply to the present case the whole provisions of Section 12, but only such one or more of them as are appropriate to an application to appeal to the Privy Council. Section 4 does not say subject to all the provisions, but simply to the "provisions," by which I think may fairly be argued is meant such provisions as are applicable and pertinent to the suit, appeal, or application, as it may be. For instance, the first part of Section 12, providing that the day from which the period of limitation is to be reckoned shall be excluded, may of course be applied to the present case. In this view of Section 4, the nature and legal character and conditions of the application or other proceeding

must not be forgotten. And if in laying down this principle I am right, then we need not apply the provisions of Section 12 of the Limitation Act to such a case as the present, unless it can be shown that a copy of the judgment is essential to the necessary purpose of an application to appeal to the Privy Council. Now I think it must be conceded that a copy of the judgment is not needed for any such purpose. The procedure and all questions relating to Privy Council appeals ought, to be determined solely with reference to the provisions contained in the sections of the CPC which regulate such appeals. These sections are twenty-three in number and form Schedule. xlv of the Code headed "Of Appeals to the Queen in Council," and it is quite distinct in itself, comprising within its provisions the whole particulars of procedure necessary in such cases. If a copy of the judgment appealed against had, in the mind of the Legislature, been considered essential, the Code no doubt would have been made so to provide, but, neither in the Code itself nor in the Limitation Act is there any express provision of the kind, and it could not, I think, be urged that a copy of the judgment appealed is a requirement suitable to and called for in such an application as this. In an ordinary application to admit an appeal the record is not here, but in the district where the original suit was instituted, and a copy of the judgment is necessary to enable an appellant here to prepare his reasons. But for the purpose of an application to appeal from a judgment of a High Court to the Privy Council a copy of the judgment is plainly not wanted either by the parties or by the Court, for the record itself is here in the High Court, containing not merely a copy, but the judgment and order actually delivered, together with the whole proceedings in the original district and also in the High Court, and this record is therefore necessarily at hand for use by the Parties or by the Judges, and the authentic instruction thus to be obtained must obviously be of greater service than a mere copy of the judgment. When, after admission by the High Court in India, the appeal gets to the Privy Council, it is subjected there to a different ordeal altogether, the cases for the appellant and the respondent, with their reasons respectively, being prepared by their Counsel in London. Neither therefore on the true constructions of Sections 4 and 12 of the Limitation Act XV of 1877, nor by any provision of the Procedure Code, nor for any necessary purpose, does that section apply to Privy Council appeals.

3. I have observed that the limitation applicable to appeals of this nature was previously that provided by Section 599 of the new Procedure Code, but that section has been repealed by the present Limitation Act, and the limitation now substituted for it by No. 177, Schedule ii is distinct and imperative and, cannot, in my opinion, be enlarged or in any way qualified by Section 12 of the same Act. The intention evidently was to allow the six months and no more, and that that long period was considered to be, as it assuredly is, sufficient for all purposes, and not, I am persuaded, that it was intended to add to the six months by the few days that might be occupied in obtaining a copy of the judgment appealed against.

4. I am therefore of opinion that the seven days, which it is contended ought to be deducted from the time that has run from the date of the decree till the date of this application, cannot be allowed: and the only question is whether the six months provided by the Limitation Act XV of 1877, Schedule ii, No. 177, had expired when this application was presented. It clearly had expired. The date of the decree proposed to be appealed to the Privy Council is the 20th August 1877, and the six months had therefore run out on the 20th of the following February. For these reasons I consider that the report of the Officer is right, and that this application must be refused, but under the circumstances without costs.

Spankle, J.

5. Section 599 of Act X of 1877 provided for the limitation of appeals to Her Majesty in Council, but the section was repealed by Act XV of 1877. The limitation now provided is that to be found at Article 177, Schedule ii, third division, applications, of Act XV of 1877, and the application is thus described: For the admission of an appeal to Her Majesty in Council, six months" and the "time from which the period of limitation begins to run" is "from the date of the decree appealed against." Act XV of 1877 amends the law relating to the limitation of (i) suits, (ii) appeals, and (iii) certain applications to Courts. By Section 4, subject, however, to the provisions contained in Sections 5 to 20 inclusive, every suit instituted, appeal presented, and application made alter the period of limitation prescribed therefore by the second schedule of the Act shall be dismissed. Every application made for which limitation is prescribed in the schedule is apparently brought u/s 4, and is subject to the provisions contained in Sections 5 to 20 inclusive. If we can find a place for the application before us in any one of these sections, its limitation is saved thereby, and it should be admitted, though after time. The second schedule, "appeals," provides the limitation in cases of appeals from the decrees and orders of the local Courts to Appellate Courts within this country. An appeal subject to such rules as may from time to time be made by Her Majesty in Council regarding appeals from Courts in British India and to the provisions contained in Schedule. xlv of Act, X of 1877 shall lie to Her Majesty in Council (Section 595 of Act X of 1877). Under the provisions of the Limitation Act application for leave to appeal to Her Majesty in Council, required by Section 598 of Act X of 1877, must be made within six months from the date of the decree appealed against. Therefore the application for leave to appeal is the first step in the appeal itself allowed by law, but subject to conditions. Its object is to appeal the decree, and limitation runs from the date of the decree appealed against. The application for leave to appeal to Her Majesty in Council is the petition referred to in Section 598 of Act X of 1877 in the following words: "Whoever desires to appeal under this chapter to Her Majesty in Council must apply by petition to the Court whose decree is complained of." The petition then is the expression of the desire of the petitioner to appeal to the Queen. It is not an appeal to the Court whose decree is complained of, but it is the mode by which the appeal to Her Majesty in Council must be presented with a view of its being transmitted to England with the record,

provided the petitioner fulfils the prescribed conditions. It is then, u/s 603, formally admitted as an appeal; no further petition is required; the original petition is the appeal to Her Majesty. By Section 600 the petition must state the grounds of appeal from the decree, for the appeal allowed is from the decree (vide Section 595 *). The grounds of appeal from the decree must be looked for in the judgment, and by Section 594 of Act X of 1877, in the chapter relating to appeals to the Queen in Council, unless there be something repugnant in the subject or context, the expression "decree" includes the judgment and order. Thus the petition really is the appeal to the Queen in Council, and therefore the time requisite for obtaining a copy of the judgment on which it is founded must also be excluded. This appears from the third paragraph of Section 12 [(q.v. supra 1 All. 644.)] of the Limitation Act, and it is unaffected by paragraph I and paragraph 2 of the section, which deal with appeals generally and particular applications, whereas paragraph 3 is exclusively confined to decrees appealed against, or sought to be reversed. I am therefore of opinion that Mr. Colvin is right in his contention and the petition is within time.

*Time within which application must be made.

[Section 599:--Such application must ordinarily be made within six months from the date of such decree.

But if that period expires when the Court is closed, the application may be made on the day that the Court re-opens.

*When appeals lie to Queen in Council.

[Section 595: Subject, to such rules as may, from time to time, be made by Her Majesty in Council regarding appeals from the Courts of British India, and to the provisions hereinafter contained--an appeal shall lie to Her Majesty in Council

(a) from any final decree passed on appeal by a High Court or other Court of final appellate jurisdiction,

(b) from any final decree passed by a High Court in the exercise of original civil jurisdiction, and

(c) from any decree, when the case, as hereinafter provided, is certified to be a fit one for appeal to Her Majesty in Council.]