AIR 1920 All 31 : 55 Ind. Cas. 315

Allahabad High Court

Case No: None

Mool Raj		APPELLANT
	Vs	
Niadar Mal (Insolvent) and Babu Jhuman Lal Vakil Receiver of the Property of Niadar Mal Insolvent		RESPONDENT

Date of Decision: Jan. 2, 1920

Acts Referred:

- Limitation Act, 1963 - Section 12
- Limitation Act, 1963 - Section 12
- Limitation Act, 1963 - Section 12

Citation: AIR 1920 All 31 : 55 Ind. Cas. 315

Hon'ble Judges: Grimwood Mears, C.J; Tudball, J

Bench: Division Bench

Final Decision: Allowed

Judgement

1. This is an application by a creditor who wishes to raise various questions in an appeal on the order of discharge granted by the learned Judge of Saharanpur. The only matter before us is whether the appeal should be allowed, it being contended that the appeal is out of time. Having regard to the terms of Section 12 of the Limitation Act, we are of opinion that Section 12 merely extends the time for any given appeal by the period which is necessary to obtain essential documents for the Court to which the appeal is being made, and that it does not contemplate and does not allow an appellant to apply for a series of documents one after the other and to claim that his time of appeal is extended merely because he has applied within the successive periods of what he contends is the extended limitation of time. In other words, an appellant must apply u/s 12 once and for all for every essential document before the period of limitation of his appeal has run out. He cannot seek in aid the extended period if he find later that an essential document is

omitted. Well, that being so, it is quite clear that on the dates the 90 days had expired without the appellant having applied for the decree and, therefore, as far as this application seeks to be brought within the provisions of Section 12 and is an application as of right, the application must fail. But Mr. Nihal Chand has asked that this appeal may be admitted on the general grounds which are allowed to us in our discretion. We have considered the matter and we are willing to admit the appeal, and we are influenced to some extent by the fact that the order of the District Judge of Saharanpur seems to us an order difficult to work out in practice and one which on consideration by the High Court may require some modification. In these circumstances we allow the application, not u/s 12, but u/s 5 and we give to the respondent on the application the costs of this application and fix them at Rs. 32.