

(1865) 03 CAL CK 0001

Calcutta High Court

Case No: None

Nobbo Kissen Singh

APPELLANT

Vs

Kaminee Dassee

RESPONDENT

Date of Decision: March 9, 1865

Judgement

Sir Barnes Peacock, Kt., C.J.

This is an application to enlarge the time for filing an appeal against a decree, and not to lodge an appeal against an order rejecting a review of judgment, even if an appeal would lie against such an order. The question arises whether the petitioner has brought his application in time, and, if not, whether there are reasonable grounds for the Court to enlarge the time. Rule 38 says:--(reads.)

Let us see whether the present application has been made within the proper time. The decree was pronounced on the 5th February. Twenty days were allowed to the plaintiff to appeal or to apply for a review of judgment. The plaintiff took the whole of his thirty days, and on the 8th March he filed a petition for review. The petition was not heard until the 23rd December when it was rejected. From the 8th March until the 23rd December, the case was tied up by the petition for review, it was not until nineteen days afterwards, that the plaintiff presented his petition of appeal. It appears to us that the petition was not made within proper time. It certainly was not made within twenty days from the date of the judgment or decree or within such period of twenty days, exclusive of the time during which the application for a review of judgment was pending.

2. The Madras Sudder Court held that, if a party present an application for review of judgment within the time limited for appealing, the period occupied by the Court in disposing of such application, will not be reckoned among the number of days limited for appealing but will be added thereto, and a memorandum of appeal presented within such extended period will be received as put in within time. We think that the rule is a correct one, and consequently that this appeal has not been presented within the time allowed by law. The question, then arises whether

sufficient cause has been shown to the satisfaction of the Court for not having presented the appeal within the limited period. Sitting as an Appellate Court for the purpose of hearing this application for extension of the time to appeal, I hold that no sufficient cause has been made out. The plaintiff had not only twenty days, but he had thirty days for presenting his petition of appeal or review. At the end of those thirty days, he presented a petition for review, and, after that petition was rejected, he took nineteen days further before he presented his petition of appeal. It seems to me that he ought to have presented his petition of appeal immediately after the petition of review was rejected. Instead of that he took as much time with the exception of one day, after the petition for review was rejected, as he would have had if the decree had been only then pronounced. It is not because the plaintiff shows, that this is not a case of appeal for delay that he makes out his case under the provisions of Rule 38. The Rule does not say that the time shall be enlarged, if the Court shall be satisfied, that the appeal is not for the sake of delay, but that it may be enlarged if sufficient cause be shown to the satisfaction of the Court for not having presented the appeal within the time limited by the rules of the Court. This has not been shown to my satisfaction, and under these circumstances the application must be rejected.

(¹) Rule 38. (Numbered 47 in the fourth edition of Broughton's CPC by Wilkinson.) "An appeal from a decree or appealable order, which shall be made after the passing of these rules by a Judge or Division Court in the exercise of ordinary civil jurisdiction, shall be presented within twenty days from the date of such decree and within four days from the date of such order. In reckoning the time, the date of the decree or order shall be excluded. The time may be enlarged upon sufficient cause being shown to the satisfaction of the Appellate Court for not having presented the appeal within such limited period."