

## APPELLATE CIVIL.

Before Bishan Narain, J.

MR. N. M. KEWALRAMANI, AND ANOTHER, —Plaintiffs-  
Appellants.

versus

MR. J. D. TYTLER, —Defendant-Respondent.

Regular Second Appeal No. 824 of 1951

*Indian Limitation Act (IX of 1908)—Sections 5 and 12  
(2)—Rule 13-A-9 of Rules for supply of copies—Judgment  
announced on last working day—Court closed for long  
vacation—Application for copies made on the reopening of*

1955

February, 7th

(1) I.L.R. 6 Rang. 29 (P.C.)

(2) I.L.R. 35 Mad.1

*court—Time spent on obtaining copies—Whether time requisite under section 12(2) of the Act—Application for copies made within time—Copies taken delivery of on the reopening of the Court—Appeal filed on the 4th day of the obtaining of copies, the last two days being holidays—Whether amounts to sufficient cause for not preferring the appeal within time.*

After court hours on the 31st August, 1950 at 5 p.m. the last working day, before the long vacation the trial court announced judgment. The court reopened on the 3rd October, 1950, and the plaintiff applied for certified copies on that day. Copies were ready on the 16th October, 1950. Courts again closed from the 17th October, 1950, to 25th October, 1950. Plaintiff took delivery of the copies on the 26th October, 1950 and filed the appeal on the 30th October, 1950, with an application under section 5 of the Limitation Act for extension of time. The lower appellate court dismissed the appeal as barred by time. Plaintiff filed a second appeal in the High Court.

*Held*, that no application for copies could have been made without obtaining the previous permission of the presiding officer under Rule 13-A-9 of the Rules for the supply of copies. An application for copies could not have been made on the 31st August, 1950, and no effectual step could have been taken that day to procure copies and it cannot reasonably be said that copies could have been supplied for and obtained at an earlier date than the 16th October, 1950. On this view of the matter it is clear that the appeal filed on the 30th October, 1950 must be held to have been filed within limitation.

*Held also*, that even if it be held that the plaintiffs should have applied for copies on the 1st of September, 1950, he was entitled to take advantage of section 5 of the Limitation Act in the circumstances of the present case. The application for certified copies was made on the 3rd October, 1950 on the reopening of the Courts and this application was admittedly made within time. The copies were ready on the 16th October, 1950. Unfortunately the Courts were closed from the 17th to the 25th of October. The copies were obtained on Thursday, the 26th October, 28th was last Saturday and 29th being Sunday, the appeal was filed on Monday. In these circumstances there was sufficient cause for not preferring the appeal within the period of limitation.

*Regular Second Appeal from the decree of the Court of Shri Tek Chand Vijn, Senior Sub Judge, Delhi, with Special Appellate Powers, dated the 28th May, 1951, affirming that of Shri Chetan Das Jain, Sub Judge, 1st Class, Delhi, dated the 31st August, 1950, passing a decree in favour of the plaintiffs against the defendant for dissolution of partnership and rendition of accounts.*

BHAGWAT DAYAL for Appellant.

GURBACHAN SINGH for Respondent.

#### JUDGMENT

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BISHAN NARAIN, J. This second appeal arises out of a suit filed for dissolution of partnership entered into between the parties in 1948 relating to a school which functioned under the name and style of Naveen Bharat High School, Delhi. The trial Court decreed the plaintiffs' suit for dissolution of partnership and for rendition of accounts but proceeded to give direction to the Commissioner who was appointed to go into these accounts. The Court announced the judgment to the counsel of both the parties on the 31st August, 1950. The plaintiffs filed an appeal in the Court of the Senior Sub-Judge on the 30th October, 1950, with an application under section 5 of the Limitation Act for extension of time. The learned Senior Sub-Judge dismissed the appeal as barred by time and the plaintiffs have filed this second appeal in this Court.

The only points that require decision in the present appeal are whether the appeal was filed within time in the Court of the learned Senior Sub-Judge and if not whether time can be extended under section 5 of the Limitation Act. The facts relevant for the decision of the above mentioned points are that the trial Court announced judgment to the parties' counsel at 5 p.m. on the

31st August, 1950, which was the last working day before the long vacations which started from 1st of September, 1950. The Civil Courts re-opened on the 3rd October, 1950, and the plaintiffs applied for certified copies of the judgment and the preliminary decree on that date. According to the endorsements on the copies these were ready on the 16th October, 1950. The Courts were again closed from the 17th October, 1950 to the 25th October, 1950 for Dussehra and Id holidays and the plaintiffs took delivery of these copies on the reopening of the Courts on the 26th October, 1950. The appeal, as I have said, was filed on the 30th October, 1950.

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The learned counsel for the plaintiffs has urged that in the circumstances of the present case the time requisite for obtaining the copies under section 12 (2) of the Limitation Act should be considered to be from the 31st August, 1950, to the 26th October, 1950 and therefore excluding this period the appeal must be considered to have been filed within limitation before the Senior Sub-Judge.

It appears that the trial Court had not fixed any date for announcing judgment in the suit. On the 31st August, 1950, at about 5 p.m. he called the parties' counsel and informed them that the suit had been decreed with costs. The learned counsel appearing for the respondent before me has not challenged the correctness of the allegation that the judgment was announced at about 5 p.m. on the 31st August, 1950, i.e., after Court hours. It was only by chance that Mr. F. C. Bedi, learned counsel for the plaintiffs happened to be available at that time in the Court premises and the Court was able to announce the judgment on that day. It is nobody's case that the plaintiffs

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were present in Court at that time. It is also to be noticed that the plaintiffs' suit was decreed and it is most unlikely that after Court hours Mr. Bedi could have read the entire judgment extending to 14 typed pages even if he had wanted to or had been allowed to do so. The findings of the trial Court on merits are all in favour of the plaintiffs and their grievance is only limited to the directions given by the trial Court to the Commissioner. It is clear in the circumstances that in the ordinary course Mr. Bedi could not have come to the conclusion immediately on the announcement of the judgment that it was necessary for his clients to file an appeal against the preliminary decree. Moreover, Mr. Bedi's clients were not present at that time and in the ordinary course it would be necessary for a counsel to get instructions of his clients before making an application for certified copies as such an application involves expenditure. The plaintiffs themselves were not present and could not have been present to file any application for obtaining copies. Moreover the judgment and decree in the present case did not terminate proceedings in the trial Court and no application for a certified copy could have been made without getting previous permission of the Presiding Officer. Rule 13-A-9 of the Rules for the supply of copies reads :—

“An application for a copy of a record of the High Court, or of a District or Sessions Court, or of an office or Court of a Commissioner or of the Financial Commissioners, made to a lower Court, or office in which the record may be at the time of the application, shall be complied with only with the permission of the Court or officer concerned.

Notes.—(1) \* \* \* \* \*

- (2) \* \* \* \*
- (3) In cases pending in Courts or in cases of an executive nature the permission of the Presiding Officer of the Court concerned ..... should be obtained by the applicant before he presents his application to the Copying Agent at District Headquarters or to the Officer-in-charge at Tahsils etc."

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In view of this rule it was necessary for Mr. Bedi at 5 p.m. on the 31st August, 1950 to read the judgment *in extenso* particularly when a decree had been passed in accordance with the relief claimed by his clients and then after deciding that an appeal must be filed by his clients take the responsibility of making an application for obtaining certified copies in the absence of his clients who would have had to pay for them. I am not surprised that Mr. Bedi did not in the circumstances make an immediate application for the permission of the Court to obtain certified copies of the judgment and decree. Under the rules the permission of the Presiding Officer was necessary for the purpose of obtaining the copies and an application was made on the reopening of the Courts on the 3rd October 1950. It is urged by the learned counsel for the respondent that he or his client had made an application on 1st of September 1950, and had obtained a copy on the 16th October, 1950, and, therefore, his argument was that Mr. Bedi could have also acted in the same manner. Further he urged that during September vacations the Copying Department remains open and it was open to Mr. Bedi to make an application at any time during September. There is no evidence that the Copying Department considered the application of Mr. Gurbachan Singh or his client dated 1st September, 1950, to be in order and it is not

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his case that he obtained the required permission of the Presiding Judge on the 31st August, 1950. An application during September by Mr. Bedi without obtaining the previous permission of the Presiding Officer would not have been in accordance with Rule 13-A-9 and I see no reason for holding that such an application should have been made merely to show that the appellant was diligently pursuing his appeal. Whether a particular time taken by a litigant in obtaining copies is the time requisite within section 12 (2) of the Limitation Act depends on the facts and circumstances of each case. The expression 'time requisite' in this subsection has been held to mean time "properly and reasonably required", by their Lordships of the Privy Council in *Prametha Nath v. Lee* (1). Taking into consideration that the judgment was pronounced on the last working day of the Courts after Court hours, i.e., about 5 p.m., in favour of the plaintiffs and considering that it was not possible at that time under Rule 13-A-9 to obtain permission of the Presiding Officer, I am of the opinion that the time taken from 1st of September, 1950, to the 16th of October, 1950, when the copies were ready must be considered to be "time requisite" for obtaining copies. Their Lordships of the Madras High Court observed in *Saminatha Ayyar v. Venkatasubba Ayyar* (2), in similar circumstances—

"It is not impossible to conceive of cases where time may properly be deducted, though the commencement of the period from which time is deducted precedes the actual application for a copy of the judgment. On the facts of the present case we think it may be said that this

(1) I.L.R. 49 Cal. 99

(2) I.L.R. 27 Mad. 21

is one of those cases. For this reason we think the appellant is entitled to deduct the period from 23rd December, to 6th January, both days inclusive as such period, in the circumstances of the case, must be taken to be part of the 'time requisite' for obtaining a copy of the judgment."

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I am in respectful agreement with these observations which fully apply to the present case. An application for copies could not have been made on the 31st August, 1950 and no effectual step could have been taken that day to procure copies and it cannot reasonably be said that copies could have been applied for and obtained at an earlier date than the 16th of October, 1950. On this view of the matter it is clear that the appeal filed on the 30th of October, 1950 must be held to have been filed within limitation, and that being so no other question arises in this appeal.

Even if it be held that the plaintiffs should have applied for copies on the 1st of September, 1950, I am of the opinion that they are entitled to take advantage of section 5 of the Limitation Act in the circumstances of the present case. The application for certified copies was made on the 3rd October, 1950, on the reopening of the Courts and this application was admittedly made within time. The copies were ready on the 16th October, 1950. Unfortunately the Courts were closed from the 17th to 25th of October, for Dussehra and Id holidays. Mr. Bedi has stated in Court that he was off and on sending his man to the Copying Department to take delivery of the copies if ready. It is unfortunate that these copies also got ready on the last working day before the beginning of Dussehra holidays and it is only a matter

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of accident that on that particular date the plaintiffs did not approach the Copying Department for copies. The delivery of these copies was taken on the 26th October, i.e., on the reopening day which was Thursday. Thereafter four days were taken in filing the appeal on Monday the 30th October. Mr. Bedi states that he took all this time in studying the case. It is not necessary to go minutely into the matter and hold whether the merits of the case required four days' study or not because I am of the opinion that this time cannot be considered to be unreasonable and that it does not show that there was any want of diligence on the part of the plaintiffs or their counsel in preferring the appeal. The copies were obtained on Thursday, 28th was a last Saturday and 29th being a Sunday was a holiday and the appeal was filed on Monday. In these circumstances I hold that the plaintiffs have succeeded in proving that they had sufficient cause for not preferring the appeal within the period of limitation.

For the reasons given above, I accept this appeal, set aside the judgment and decree of the Senior Sub-Judge and remand the appeal for decision in accordance with law. The parties have been directed to appear before the Senior Sub-Judge on the 14th March, 1955. The parties will bear their own costs in this Court.