

The National documents filed in Court by the plaintiff-firm on the Fire & General 30th of November 1948. There are entires in the Insurance Co. *bahi khata* relating to bags, but there is no entry showing that the bags in the godown numbered 1,500 and *v.* that price was Rs. 900. This being the situation of matters, I find that the defendant-company was guilty of *suppressio veri* in making the application under rule 17 of Order VI of the Code. On this ground alone the petition was liable to dismissal. But quite independently of this objection on the facts stated above it is clear that the information on which the proposed amendment is sought was with the defendant-company on the 23rd of January 1948, and the defendant-company filed a written statement on the 3rd of November 1948. That being so, I agree with the trial Court that the application for amendment was so belated as to deserve dismissal.

M/s Mool
Singh-Gurdev Singh,

Harnam
Singh J.

For all these reasons I find no force in the Civil Revision No. 575 of 1949 which fails and is dismissed.

In the result I dismiss Civil Revision Nos. 123 and 575 of 1949 with costs.

As the case is fixed in the trial Court on the 26th of June 1950, I direct that the records may be sent back so as to reach the trial Court before the 26th of June 1950.

CIVIL APPELLATE

Before Harnam Singh, J.

KARORA SINGH,—*Defendant-Appellant,*

versus

KARTAR SINGH (PLAINTIFF) AND SADA SINGH, ETC.
,— (DEFENDANTS)—*Respondents.*

1950
June 19,

Regular Second Appeal No. 455 of 1948.

Civil Procedure Code (Act V of 1908), Order 41, rule 22—Cross-objections—Whether competent—When appeal barred by time.

Held that an appeal must be properly before the Court in order that cross-objections may be heard.

Where the appeal, as in the present case is barred by time, neither the appeal nor the cross-objections are properly before the Court and the Court has no power to proceed with the matter.

Ramjiwan Mal and others v. Chand Mal and others (1), *Jai Gopal Singh v. Munna Lal and others* (2), relied upon.

Second Appeal from the decree of Shri S. L. Madhok, Additional District Judge, Ferozepore, dated the 3rd May 1947, reversing that of Shri M. Saleen, Sub-Judge, 2nd Class, Zira, dated the 11th May 1946, and awarding the plaintiff a declaratory decree to the effect that the sale in question shall be null and void as against the reversioners except to the extent of Rs. 5,578 which amount shall be a charge on the land in question and shall be payable by the reversioners to the alienee before obtaining possession of the land. Further holding that the sale is converted into a mortgage for Rs. 5,578 and leaving the parties to bear their own costs throughout.

D. N. AGGARWAL, for Appellant.

A. N. GROVER, for Respondent.

JUDGMENT.

HARNAM SINGH, J. Mr. Amar Nath Grover urges a preliminary objection that the appeal is barred by time.

Harnam
Singh, J.

The facts, so far as material, are, that on the 3rd of May 1947, Additional District Judge, Ferozepore, allowing civil appeal No. 67/42 of 1946, passed a decree to the effect that the sale in question shall be null and void as against the reversioners of Sucha Singh, alienor, except to the extent of Rs. 5,578. On the 5th of May 1947, Karora Singh, defendant, made an application for a copy each of the judgment and decree under appeal. The copies were certified under section

(1) I.L.R. (1888) 10 All. 587.
(2) 1924 A.I.R. (Lah.) 43.

Karora Singh, 78 of Act I of 1872 on the 14th of May, 1947 In computing the period of limitation for filing the appeal
 v. Kartar Singh the period between the 5th of May, 1947, and the 14th
 (Plaintiff) and of May 1947, has to be excluded. The appeal was,
 Sada Singh, however, filed in this Court on the 29th of June 1948.
 etc. (Defen-

da nts),

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 Harnam
 Singh J.

Karora Singh, appellant, filed an affidavit in this Court on the 29th of June 1948, explaining the delay that had occurred in the filing of the appeal. He affirms that on the 12th of July 1947, he engaged Mr. Dev Raj Sawhney, Barrister-at-Law, Lahore, for filing civil appeal, *Karora Singh v. Kartar Singh and others*. and that on that day he gave to Mr. Sawhney the necessary papers and the court fee for the appeal. On the 15th of August 1947, Punjab was divided under section 4 of the Indian Independence Act, 1947, and it appears from the affidavit that Karora Singh, appellant, made anxious enquiries about his appeal from Mr. Sawhney, but receiving no reply from the counsel or his clerk, Karora Singh sent Teja Singh to Simla to enquire about the appeal. Going back from Simla, Teja Singh told Karora Singh, appellant, on the 20th of June 1948, that the appeal had not been filed. Leaving his village for Simla, Karora Singh reached Simla on the 27th of June 1948, and filed the appeal in this Court on the 29th of June 1948.

For the decision of the preliminary objection it is not necessary for me to investigate as to whether Karora Singh was prevented by sufficient cause from not filing the appeal between the 1st of August 1947, when the period prescribed for filing the appeal expired and the 27th of June 1948, when he reached Simla for filing the appeal for I find that there is no justification for not filing the appeal on the 28th of June 1948. An examination of the diary of 1948 shows that Karora Singh reached Simla on Sunday, the 27th of June 1948. The appeal could have been filed by him in this Court on the 28th of June 1948. This was not done. The fact that he reached Simla on the 27th of June is mentioned in paragraph 9 of the affidavit of Karora Singh. Then the affidavit put in support of the application under section 5 of the Indian

Limitation Act shows that the affidavit was sworn by Karora Singh, Karora Singh in this Court on the 28th of June 1948. Indeed, the record shows that Karora Singh purchased stamp papers for the appeal on the 28th of June 1948. There is, however, not a syllable in the affidavit of Karora Singh giving any explanation for his not filing the appeal on the 28th of June 1948. Indeed the circumstances disclosed by the record show that the appeal was not filed on the 28th of June 1948, by reason of sheer negligence.

v. Kartar Singh
(Plaintiff) and
Sada Singh,
etc. (Defen-
dants),
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Harnam
Singh J.

In construing section 5 of the Indian Limitation Act, Courts in India have held that the existence of sufficient cause for not filing the appeal within time is a condition that must be satisfied before the Court can exercise its power of granting or refusing to grant the extension of time under section 5 of the Limitation Act. In the present case no attempt is made to explain why the appeal was not filed in this Court on the 28th of June 1948.

That being so, I find no justification for giving the appellants the benefit of section 5 of the Indian Limitation Act, 1908.

In the result, the appeal fails and is dismissed as barred by time.

Considering, however, the circumstances of the case I would leave the parties to bear their own costs in this appeal.

Kartar Singh, contesting respondent, has filed cross-objections in this case maintaining that the learned Additional District Judge erred in not granting a declaration to the plaintiff that the sale in question was wholly without consideration and necessity and was not binding on the plaintiff.

Now, it is settled law that appeal must be properly before the Court in order that cross-objections may be heard. In *Ramjiwan Mal and others v.*

Karora Singh, *Chand Mal and others* (1), Mahmood J. (Straight J. concurring) said :

v.
Kartar Singh
(Plaintiff) and
Sada Singh,
etc. (Defen-
dants),

—
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“ I take the effect of these various cases to be that entertainment of objections such as section 561, Civil Procedure Code contemplates, is contingent and dependant upon the hearing of the appeal in which objections are raised, and that when the appeal itself fails, or is rejected or dismissed without being disposed of upon the merits, the objections follow its fate and cannot be entertained either.”

Section 561 of the old Code corresponds to rule 22 of Order XLI of the Code of Civil Procedure, 1908.

In *Jai Gopal Singh v. Munna Lal and others* (2), Fforde J. (Shadi Lal, C. J., concurring) said :

“ It is clear that an appeal must be properly before the Court in order that the cross-objections may be heard. As the appeal in question was admittedly barred by time, neither the appeal nor the cross-objections were properly before the Court, and accordingly the Court had no power to proceed with the matter.”

With great respect I follow the rule laid down in *Jai Gopal Singh v. Munna Lal and others* (2) and find that cross-objections are not competent.

For the foregoing reasons I dismiss the appeal and the cross-objections.

Considering that the appeal and the cross-objections fail, I leave the parties to bear their own costs in this Court.

(1) I.L.R. (1888) 10 All. 587.

(2) 1924 A.I.R. (Lah.) 43.