

APPELLATE CIVIL.

Before Mr. Justice Kemball and Mr. Justice Pinhey.

RANCHODJI AND OTHERS (ORIGINAL PLAINTIFFS), APPELLANTS, v. LALLU
AND OTHERS (ORIGINAL DEFENDANTS), RESPONDENTS.*

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March 9.

Judge—Judicial discretion—Appeal—Review—Limitation.

Where the law leaves a matter within the discretion of a Court, and the Court, after proper inquiry and due consideration, has exercised the discretion in a sound and reasonable manner, the High Court will not interfere with the conclusion arrived at, even though it would itself have arrived at a different conclusion.

Consequently, where a District Judge, after due inquiry, refused to admit an appeal presented after the time prescribed by the Statute of Limitations, the High Court would not interfere with his order.

THIS was an appeal from the order of G. M. Macpherson, Judge of Surat, dismissing a petition of appeal against the decree of Rao Saheb Chunilal Maneklal, Subordinate Judge of Bulsar.

The plaintiffs sued for a declaration that a right to recover a certain assessment which the defendants possessed against them under two instruments executed by the ancestors of the plaintiffs to those of the defendants in 1808 and 1829 was limited to the amount of assessment which the Government might fix. They also prayed for an injunction restraining the defendants from suing them for a large sum.

The defendants, *inter alia*, contended that the stipulations of the documents should be carried out to the fullest extent, and that the plaintiffs' suit did not lie.

The Subordinate Judge rejected the claim of the plaintiffs; who appealed to the District Judge.

The District Judge refused to admit the appeal:

Nanabhai Haridas, Government Pleader, for the appellants.

Gokaldas Kahandas for the respondents.

KEMBALL, J.—This is an appeal against the order of the District Judge of Surat dismissing a petition of appeal on the ground that it was presented after the period prescribed therefor. It appears that the decree of the Court of first instance was passed by the Subordinate Judge of Bulsar on the 27th April last, shortly

* Second Appeal, No. 450 of 1881.

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before the commencement of the annual vacation, and the petition of appeal against it ought to have been presented on the 16th June following, the day on which the Courts in the Surat District re-opened. It was not, however, presented till the morning of the following day, *i. e.*, the 17th, when the appellant Ranchodji represented to the District Judge by petition (the truth of which was sworn to) that he had left his village of Eru for the nearest railway station, Navsari, at 9 P.M. on the 15th *idem*, in order to catch the mail train which would have taken him to Surat on the same night ; but that the axle of the cart, in which he was travelling, having broken, he was, in consequence, delayed on the road, and did not reach the aforesaid railway station till after the said train had left. He further stated that he went on by the very next train to Surat, and, on arrival there, proceeded to the Court, which he reached at 5 P.M., only, however, to find that the Court had risen. This explanation the District Judge considered "quite insufficient", and desired the production of further affidavits, especially as to the times at which appellant Ranchodji left his house and arrived at the station. Affidavits and further affidavits of the cart-driver who had accompanied the said appellant Ranchodji from his village to the spot where the cart broke down and of a friend who met Ranchodji at the station were accordingly put in, and on a consideration of these, coupled with the original petition, the District Judge found that, whereas Ranchodji had said that on his cart breaking down he proceeded at once to the station which he reached just as the train had left, it appeared from the affidavits that he stayed some three quarters of an hour to catch his bullocks which had fled when the axle broke, and arrived by so much late at the station ; and further that, looking at the hour at which Ranchodji stated he left his village and at the advertised time for the mail train to leave Navsari, he must have left himself barely time in any case to reach the station. The appeal was accordingly rejected. Had such an application, based on such affidavits, been presented to this Court, I have little doubt, speaking from an experience of almost twelve years in it, that the result would have been different ; but the question which we have to consider is, whether this Court has any power to interfere with the discretion of the

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Court below which expressed itself not satisfied with the sufficiency of the reason put forward by the appellant Ranchodji for the delay. The said appellant himself appears to have felt this difficulty ; for instead of stating, as he was required to do by section 541 of the Civil Procedure Code (X of 1877), *the ground of objection* to the decree appealed against, he contented himself, after setting forth the facts, with this request : “ Your Lordships will, therefore, be pleased to order such appeal to be received and disposed of on the merits.” However, it has been argued here by Mr. Nanabhai, on the said appellant’s behalf, that if this Court is disposed to think that the delay should, under the circumstances explained, have been excused, it can and ought—an appeal being given by law against the District Judge’s order of rejection—to interfere, albeit the matter was one entirely within the District Judge’s jurisdiction. Several cases have been cited by Mr. Nanabhai in the course of his argument : *Zaibulnissa Bibi v. Kulsum Bibi*(1) ; *Hardatrai Shrikisondas v. Victoria Finance and Bullion Association*(2) ; *Juggomohun Ghose v. Manickchund and another*(3) ; *Murtunjoy Chuckerbutty v. John Cockrane, Official Assignee of the estate of Messrs. Kickey, Bailey and Co., Insolvents*(4) ; *M. G. Pendse v. R. S. Malse*(5) ; *Mowree Bewa v. Soorundarnuth Roy*(6) ; *The Secretary of State for India in Council v. Mutu Sawmy and another*(7) ; *Lee and another v. The Bude and Torrington Junction Railway Company*(8) ; *Dubey Sahai v. Ganeshi Lal*(9).

With reference to the cases quoted from Moore’s Indian Appeals while I am unable to see the applicability of the second case, it is sufficient for me to observe that it is, to say the least, extremely doubtful whether the Judicial Committee, though dealing as they have to deal with questions of fact as well as law, would, save under exceptional circumstances, interfere with the discretion of a Court. The other cases cited seem to me only to go to this, that the discretion of a Court is liable to review or appeal where such Court is acting through caprice or prejudice, or where the discretion

(1) I. L. R., 1 All., 250.

(5) 3 Bom. H. C. Rep., A. C. J., 101.

(2) 3 Bom. H. C. Rep., O. C. J., 60.

(6) 10 Calc. W. R., 178.

(3) 7 M. I. A., 263.

(7) 4 Beng. L. R., Appx., 84.

(4) 10 M. I. A., 229.

(8) L. R., 6 C. P., 576.

(9) I. L. R., 1 All., 34, F. B.

is exercised without any proper legal material to support it. There can be no doubt that where the exercise of discretion is perverse, this Court can and will interfere, as it did in the case of *Hardatrai Shrikisondas v. Victoria Finance and Bullion Association*(1); but I am not aware of any single authority for the proposition that a sound and reasonable exercise of the jurisdiction given by law to a Court is open in any way to revision, though there are decisions to the contrary: see *Raj Coomar Roy v. Shaikh Mahomed Wais and others*(2) and *In the matter of Bhujokuree Mundul*(3). It is, I think, impossible to hold that the Judge in the present case has exercised his discretion capriciously or without material sufficient in law to satisfy himself whether or no there was sufficient cause for the delay; and the order complained of, being the result of the exercise of a judicial discretion vested in the Judge, is, in my opinion, clearly one with which an Appellate Court cannot interfere. The decree (which the order appealed against must be taken to be under section 2, Civil Procedure Code) of the District Judge must, therefore, be confirmed with costs.

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PINHEY, J.—The appellants Ranchodji and sixteen others filed a suit in the Subordinate Court at Bulsar against eleven defendants to obtain a declaratory decree. The Subordinate Court, on the 27th April, 1881, dismissed the claim with costs. The summer vacation intervening, the District Court of Surat re-opened on the 16th June, and, therefore, if the plaintiffs desired to appeal from the decision of the Subordinate Court, they should have presented their appeal to the District Court on that day. No appeal was, however, presented until the following day,—that is, the 17th June. The memorandum of appeal and a *vakalatnama* in the name of all the plaintiffs were taken from their village to Surat by the appellant Ranchodji, who is now present in Court; and the reason which he gave to the District Court at Surat for not presenting the appeal in time, was that he missed the mail train which would have brought him to Surat on the morning of the 16th, and that the next train brought him to Surat on the 16th after the District

(1) 3 Bom. H. C. Rep., O. C. J., 60.

(2) 7 Calc. W. R., 337.

(3) 18 Calc. W. R. 293.

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Court was closed, and so he could not present the appeal until the 17th. The District Court, after postponing the case for enquiry and taking evidence, refused to admit the appeal, considering the delay in presenting it not satisfactorily accounted for. The District Court found that, notwithstanding the extended time given by the occurrence of the vacation for the presentation of the appeal, Ranchodji had put off taking the appeal, to Surat until the last train that would have taken him to Surat in time, and had, moreover, put off starting from his home for that train until it was almost (if not quite) physically impossible for him to catch that train.

We are asked to set aside the order of the District Court and to direct that Court to admit the appeal and proceed to dispose of it on its merits. I am, however, of opinion that the order of the District Court should not be set aside. No error of law was committed by the District Court; but, after a proper enquiry and due consideration of the facts alleged by the appellant Ranchodji, the District Court, in the exercise of its discretion, held that the delay in presenting the appeal was not satisfactorily accounted for. That is not an order which the High Court should reverse on appeal, even if the members of the Court think they individually would have treated the appellant more leniently if either of them had been presiding over the District Court when the appeal was presented: *Raj Coomer Roy v. Shaiikh Mahomed Wais and others*(1). That case is on all fours with this; and I entirely concur with the opinion expressed by Jackson, J., in it. In all the other cases which have been cited for the appellant (with one exception), in which the High Court varied the order of the Court below, whether for receiving or refusing to receive an appeal after time, the ground on which the High Court's order proceeded was that the Court below either had exercised no discretion at all, or had no legal evidence before it on which the discretion of the Court could operate. The only exception to this rule is the case of *Hardatrai Shrikisondas v. Victoria Finance and Bullion Association*(2), and that case was not a case in which the Court below had refused to admit an appeal after time, but had refused to re-admit a case dismissed for default in consequence

(1) 7 Calc. W. R., p. 337.

(2) 3 Bom. H. C. Rep., O. C. J., 60.

of the non-appearance of the plaintiff. The suit was dismissed under the Code of Civil Procedure of 1859; and, under section 119 of that Code, an appeal was specifically given from an order refusing to set aside the dismissal of the suit. And the order of the Judge rejecting the plaintiff's application was so obviously perverse and improper, that counsel for the defendant did not apparently attempt to support it.

In the present case the District Court considered the reasons given for the delay in presenting the appeal fully on their merits, and, in the exercise of its discretion, determined that the delay was not satisfactorily accounted for. I have given the substance of the reasons of the District Court's order above. I further notice that it appears from the District Court's judgment that the appellant appears to have endeavoured to mislead the Court by falsehood, or, at least, by prevarication. To use the words of James, L.J., in *Sheffield v. Sheffield*, I would "not encourage appeals in cases which, like this, depend entirely upon the discretion of the Judge," especially where, as in this case, the Judge has exercised his discretion carefully and after having the case before him on two separate days.

I would confirm the order of the District Court with costs.

Decree confirmed accordingly with costs.

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Before Mr. Justice Melvill and Mr. Justice Kemball.

MIR AZIMUDIN KHAN (ORIGINAL PLAINTIFF), APPELLANT, v. ZIA-UL-NISA AND ANOTHER (ORIGINAL DEFENDANTS), RESPONDENTS.*

March 7.

Sale by a young person not a minor—Grounds for its cancelment—Sale by seamen—Sales by expectant heirs of reversionary interests.

In the case of a sale by a person, young indeed and in distressed circumstances, but not without advice or means of information, of an estate actually vested in him, but not to be obtained without litigation, the party seeking to set aside the sale must establish the fraud, actual or constructive, which entitles him to relief. It is not sufficient for him to show that he did not receive the full value of the estate to which the result of the litigation might ultimately show him to be entitled. The difference between that value and the purchase-money, if not

* Regular Appeal, No. 34 of 1880.

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