APPELLATE CIVIL.

Before Sir Charles Sargent, Knight, Chief Justice, and Mr. Justice Kemball.

1884
January 15.

GULÁM HUSEN MAHAMED (ORIGINAL PLAINTIFF), APPELLANT, *v.* SAYAD MUSÁ MIYÁ HAMAD ALI (ORIGINAL DEFENDANT), RESPONDENT.*

Review—Application for review—Limitation Act XV of 1877, *Sec.* 5—*Sufficient cause for delay—Pendency of second appeal—Ignorance of effect of judgment—Small Cause Court suit, appeal from interlocutory order in—Practice—Procedure.*

G. obtained a decree against M. in the Court of the Subordinate Judge of Ahmedabad for the refund of a certain sum of money alleged to have been illegally levied by B. as *inámdár* for local-fund cess due for certain years. In appeal, the District Court on the 21st March, 1882, varied the decree, and reduced the amount. On second appeal the High Court, on 23rd June, 1882, dismissed the appeal, on the ground that the lower Courts had no jurisdiction, the suit being a Small Cause Court suit. The decree of the District Court consequently remained in force. In July, 1882, G. brought a second suit against M. in the Small Cause Court at Ahmedabad for moneys illegally levied by M. in subsequent years. The Judge of that Court held that the decree in the former suit passed on 21st March, 1881, estopped M. from disputing G.'s claim, and that the matter was *res judicata*.

M. then procured the proceedings in the Small Cause Court to be stayed, and on the 18th November, 1882, applied to the District Court for a review of its decree of 21st March, 1881. The District Judge granted the review on the ground that the time lost by M. in the prosecution of the second appeal should be excluded from computation, and that the subsequent delay was justified by the fact that M. was not aware of the effect of the decision in the first suit until informed of it by the Judge of the Small Cause Court at the hearing of the second suit. On appeal to the High Court,

Held, reversing the order of the District Judge, that the circumstances did not justify the admission of M.'s application for review after the expiration of the ninety days allowed by the Limitation Act. The pendency of an appeal is not a "sufficient cause" for not presenting the application earlier within the meaning of section 5 of the Limitation Act XV of 1877.

An applicant for review cannot plead his ignorance of the effect of the judgment as a justification for his delay.

Although no appeal lies to the High Court from the final decree made in a suit cognizable by a Small Cause Court, an appeal lies from an interlocutory order made in such a suit by a District Court.

THIS was an appeal against the decision of S. H. Philpotts, District Judge of Ahmedabad, in an application for review in Appeal No. 155 of 1880.

*Appeal, No. 13 of 1883, from order.

1884

GULÁM HUSEN MAHAMED v. SAYAD MUSÁ MIYÁ HAMAD ALI.

In 1879 the appellant Gulám Husen sued the respondent Sayad Musá Miyá for the refund of a certain sum of money illegally levied by the latter as *inámdár* on account of the summary settlement and local-fund cess. The Subordinate Judge of Ahmedabad awarded the appellant's claim. In appeal, the District Judge reduced the amount allowed by the first Court. The decree of the District Court was dated the 21st March, 1881. The respondent (Sayad Musá) filed a second appeal against that decree. On the 22nd June, 1882, the High Court dismissed the second appeal on the ground that the lower Courts had no jurisdiction, the suit being a Small Cause Court suit. The decree of the District Court accordingly remained in force. On the 10th July, 1882, Gulám Husen brought a second suit against Musá Miyá in the Small Cause Court of Ahmedabad for the refund of money levied by the latter for years subsequent to the years for which the money sued for in the first suit was levied. The Judge of that Court was of opinion that the decree in the first suit (21st March, 1881,) estopped Musá Miyá from disputing the claim and that the matter was *res judicata*. Musá Miyá then got the proceedings in the Small Cause Court stayed, and on the 18th November, 1882, applied to the District Court for a review of its decree of the 21st March, 1881. The District Judge granted the review, on the ground that the time lost by Musá Miyá in the prosecution of the second appeal should be excluded from computation, and that the subsequent delay was justified by the circumstance that Musá Miyá was not aware of the effect of the decree in the first suit till informed by the Judge of the Small Cause Court at the hearing of the second suit.

Gulám Husen appealed to the High Court.

Ráv Sáheb *Vásudev Jagonáth* for the respondent took a preliminary objection that the order appealed against was an interlocutory order in a Small Cause Court suit, and that as no appeal lay to the High Court from the final decree in such a suit, none could, *a fortiori*, lie from such interlocutory order.

The Court, however, overruled the objection on the authority of *Máhádeo Narsinh* v. *Rágho Keshav*[1] and *Chaudhári Ranjit Singh* v. *Jáfar Ali Khán*[2]:

(1) I. L. R., 7 Bom., 292. (2) I. L. R., 3 All., 18.

1884

GULÁM HUSEN MAHAMED v. SAYAD MUSÁ MIYÁ HAMAD ALI.

The Court then heard the case on the merits.

Ganpat Sadáshiv Ráv for the appellant.—The District Judge was wrong in granting the review, as the application for it was presented long after the prescribed period, and no sufficient cause was shown for the delay. As observed by the Privy Council in *Mahárájáh Moheshur Sing* v. *The Government of Bengal*(1), the causes accounting for the delay in presenting a petition for review and intended to justify the grant of it, ought to be of grave importance. The mere pendency of an appeal, or second appeal, is no sufficient excuse for the delay, and no just and reasonable ground for admitting a review after the prescribed time. Cites *Fakirá* v. *Basápá Mahádan Shetti*(2); *Sham Churn Chuckerbutty* v. *Bindábun Chunder Roy*(3); *Lucas* v. *Stephen*(4); *Bolákee Lall* v. *Monjee Lall*(5). No one ought to be allowed to set up his ignorance of the effect of a decree passed against him.

Ráv Sáheb *Vásudev Jagonáth, contra.*—The respondent presented his second appeal against the decree of the 21st March, 1881, in the *bonâ-fide* belief that it was maintainable. The time, therefore, occupied till the disposal of that appeal ought to be excluded from computation,—Act XV of 1877, secs. 5 and 14; *In re Brojender Coomar Roy Chowdry*(6); *Kuller Singh* v. *Jewun Singh* (7); *Balwant Singh* v. *Gumani Rám* (8); *Trimbakráj Sahádevshet* v. *The General Traffic Manager of the G. I. P. Railway Company*(9). As to the interval between the 22nd June, 1882, when the High Court dismissed the appeal, and 18th November, 1882, when the application for review was presented to the District Court, the respondent *bonâ fide* believed that the decree sought to be reviewed, had not the effect of *res judicata* until he was made aware of it by the Small Cause Court. That time, therefore, ought to be excluded also. The question—what is the legal effect of a decree against which an appeal had been preferred, but dismissed on a preliminary point only?—is still a moot point. There are only two decisions bearing on it—

(1) 7 M. I. A., 283; 3 Calc. W. R. (P.C.), 45.
(2) 8 Bom. H. C. Rep., 234 (A. C. J.).
(3) 9 Calc. W. R. Civ. Rul., 181.
(4) 9 Calc. W. R. Civ. Rul., 301.
(5) 17 Calc. W. R. Civ. Rul., 163.
(6) 7 Calc. W. R. Civ. Rul., 529.
(7) 22 Calc. W. R. Civ. Rul., 79.
(8) I. L. R., 5 All., 591.
(9) Printed Judgments for 1880, p. 345 (unreported).

Sitárám Amrut v. *Bhagvant Jaganáth*[1] and *Rámbux Chittangeo* v. *Modhoosoodan Paul Chowdhry* [2].

The following is the judgment of the Court delivered by—

SARGENT, C.J.—We think that the causes of the delay assigned by the respondent were not sufficient to justify the admission of his application for review after the expiration of the ninety days. The interval between the 21st March, 1881, the date of the judgment sought to be reviewed, and the 22nd June, 1882, is considered by the District Judge to be adequately explained by the circumstance of the respondent having preferred a second appeal before the High Court which was not disposed of until the latter date. The cases, however, of *Fakira* v. *Basápá Mahádan Shetti*[3] and *Lucas* v. *Stephen*[4] are distinct authorities that the mere pendency of a special appeal is not "a just and reasonable cause for delay in applying for a review within the contemplation of section 376 of Act VIII of 1859," and, if that be so, it would not be a "sufficient cause" as contemplated by section 5 of Act XV of 1877.

It was, indeed, urged that these decisions are not consistent with the rulings of the Calcutta High Court in the petition of *Brojender Coomar Roy Chowdry* v. *Baboo Shreenáth Dás*[5] and in *Kuller Singh* v. *Jewun Singh* [6], and which are referred to with approval by this Court in *Trimbakráj* v. *The General Traffic Manager of the G. I. P. Railway Company*[7], *viz.*, that an application for review is a sufficient cause for delay in preferring an appeal, whether under Act XIV of 1859 or section 5 of Act IX of 1871. But this distinction between the cases is obvious. It is only right and reasonable that a man should endeavour to rectify the decree he complains of, by asking the Court to review it before he takes the step of appealing against it. But, on the other hand, if he does not adopt that reasonable course, his not doing so cannot (apart from special circumstances) be regarded as a sufficient cause for the delay in applying for a review.

(1) 6 Bom. H. C. Rep., 109, A. C. J.
(2) 7 Calc. W. R. Civ. Rul., 377.
(3) 8 Bom. H. C. Rep., A. C. J., 234.
(4) 9 W. R., 301.
(5) 7 W. R., 529.
(6) 22 W. R., 79.
(7) Printed Judgments for 1880, p. 345

1884

GULÁM HUSEN MAHAMED v. SAYAD MUSÁ MIYA HAMAD ALI

As to the fact that the second appeal in this case was disposed of on the ground that the High Court had not jurisdiction, we do not think it ought to affect the question. Again, after the appeal was disposed of on 26th June 1882, the respondent took no proceedings until 18th November, 1882,—a delay which he justified to the satisfaction of the District Judge on the ground that the amount of the judgment was but a small sum, and that he had not been aware, until informed by the Subordinate Judge at the hearing of the second suit instituted by the appellant on the 10th July, 1882, that the decree of the first suit would operate as *res judicata*. But to allow an applicant for review to plead his ignorance of the legal effect of the judgment as a justification of his delay, would be to expose the decree-holder to the possibility of a review for an indefinite period.

We must, therefore, discharge the order of the District Judge, and refuse the application for review, with costs on the respondent in the Court below and on appeal.

Order discharged.

APPELLATE CIVIL.

Before Mr. Justice West and Mr. Justice Nánábhái Haridás.

January 23. THE COLLECTOR OF THÁNA, APPLICANT, *v.* BHÁSKAR MÁHÁDEV SHETH, OPPONENT.*

Vatan—Bombay Hereditary Offices Act III of 1874, *Sec.* 10—*Collector's certificate—Bombay Legislative Council—Extent of its power—Jurisdiction of High Court.*

The Bombay Legislative Council has authority to make laws regulating the rights and obligations of the subjects of the Bombay Government, but not to affect the authority of the High Court in dealing with them when made.

The High Court in its appellate jurisdiction is bound to administer the law as it subsists in the subordinate Courts.

The Collector when granting a certificate under section 10 of the Bombay Hereditary Offices Act (No. III of 1874) exercises a judicial function, and is subject to the supervision of the High Court; but the High Court will not interfere with his discretion, unless there is violent misuse of authority, obvious bad faith, or reckless disregard, or wanton perversion of the law on his part.

THIS was an application under section 622 of the Code of Civil Procedure (XIV of 1882).

* Extraordinary Application, No. 81 of 1883.