

1893  
SEP. 2.  
ORIGINAL  
CIVIL.  
18 B. 66.

just allowances, he is already ordered to pay to the appellants. The respondent to pay to the appellants their costs in the lower Court including costs below and of this appeal, and to bear his own costs throughout, and repay to the appellants any costs which under the decree of the Court below they may have paid to him, and also repay to the appellants any costs paid by them to him under the decree in suit No. 25011 of 1891 in the Court of Small Causes dated the 5th December, 1891. If there be a reference to the Commissioner, further directions and further costs will be reserved with leave to apply as advised.

*Decree reversed.*

Attorneys for the appellants :—Messrs. *Chalk, Walker and Smetham.*  
Attorneys for the respondent :—Messrs. *Balkrishna and Pherozsha.*

18 B. 84.

[84] APPELLATE CIVIL.

*Before Mr. Justice Candy and Mr. Justice Fulton.*

PUNDLIK (*Original Plaintiff*), *Appellant v. ACHUT*  
(*Original Defendant*), *Respondent.\** [10th January, 1893.]

*Limitation—Limitation Act (XV of 1877), s. 5—Review of judgment—Application for review—Sufficient cause for delay in filing an appeal.*

Though under certain circumstances the presentation of an application for review may be considered as sufficient cause for delay in filing an appeal, the appellant is bound to satisfy the Court that such circumstances did exist in his case, and that he had sufficient cause for not presenting the appeal within the prescribed period.

The plaintiff obtained a decree for possession of certain land in the Court of first instance. This decree was reversed by the appellate Court on 28th October, 1890. The plaintiff applied for a review of judgment of the appellate Court on 27th January, 1891. The petition of review was rejected on 18th March, 1891. Thereupon the plaintiff preferred a second appeal to the High Court on 13th April, 1891.

*Held*, that the second appeal was time-barred. The time taken in prosecuting the application for review could not be deducted in calculating the period of limitation, as the plaintiff had not shown that he had reasonable grounds for asking for a review.

[F., 33 C. 1323=3 C. L. J. 545 (546)=10 C. W. N. 986; 1 L. B. R. 313 (314).]

THIS was a second appeal from the decision of Arthur H. Unwin, District Judge of Kanara, in appeals Nos. 169 and 192 of 1890 of the district file.

The plaintiff sued to eject the defendant from the lands in dispute, alleging that defendant was a trespasser in wrongful possession.

The Court of first instance passed a decree awarding possession to the plaintiff as prayed for.

This decree was reversed, and plaintiff's claim was rejected, on appeal, on 28th October, 1890.

On 27th January, 1891, the plaintiff applied for a review of the judgment of the appellate Court. The petition of review was rejected on 18th March, 1891.

\* Second Appeal, No. 511 of 1891.

Thereupon plaintiff preferred a second appeal to the High Court on 13th April, 1891.

At the hearing of the appeal the respondent's pleader raised a preliminary objection that the appeal was time-barred, having [85] been filed more than 90 days after the date of the lower appellate Court's decree.

*Shamrao Vithal* (with him *N. G. Chandavarkar*), for appellant.—We applied for a review of the lower Court's judgment on the ground of the discovery of new evidence. The time occupied in the review should be excluded from computation—*Trimbakraj v. The General Traffic Manager of the G. I. P. Railway Company* (1).

*Ghanasham Nilkanth*, for respondent.—The mere presentation of a petition of review is not a sufficient reason for filing an appeal beyond time. The appellant must show that he had reasonable grounds for asking for a review. This he has not done in the present case. There is nothing to show that the lower Court was wrong in refusing to grant a review. The delay in filing the appeal should not, therefore, be excused.

#### JUDGMENT.

CANDY, J.—We think that the appellant in this case has failed to show that he had reasonable grounds for asking for a review and, therefore, the time taken in prosecuting the application for review cannot be deducted in calculating the period of limitation, and thus the present appeal is time barred. The only evidence before us in regard to this matter is a copy of the order of the District Judge rejecting the application for review on the ground that no sufficient reason had been shown why the evidence referred to in the application was not adduced at the original hearing of the suit, while there was "every reason why, if relevant, it should have been adduced before all other." No copy of the application for review has been referred to before us, nor has any attempt been made to show when the fresh evidence was discovered, and how long afterwards the application was made, or that the District Judge was in error in the strong opinion which he expressed.

The ruling in *Trimbakraj v. The General Traffic Manager of the G. I. P. Railway Company* (1) shows that, under certain circumstances, the presentation of an application for review may be considered as sufficient cause for delay in filing an appeal. But in the present case we do not think that such circumstances are proved to exist. Under the proviso to Rule 9 (VI) of [86] chap. I of the High Court Rules, it was incumbent on appellant to be prepared to satisfy the Court that he had sufficient cause for not presenting his appeal within the time prescribed by law. This he has not done, and his appeal must be dismissed. All costs on appellant.

*Appeal dismissed.*

1893  
JAN. 10.  
—  
APPEL-  
LATE.  
CIVIL.  
—  
18 B. 84.