

ORIGINAL CIVIL.

Before Sir Charles Sargent, Kt., Chief Justice, and Mr. Justice Farran.

MOROB RA'MCHANDRA (PLAINTIFF), APPLICANT, v. GHANASHA'M
NILKANT NA'DKARNI (DEFENDANT), OPPONENT.*

1894.

December 10.

Privy Council—Appeal to Privy Council—Time to appeal—Limitation—Limitation Act (XV of 1877), Secs. 5 and 12, and Sch. II, Art. 177—Civil Procedure Code, Sec. 598.

An application for leave to appeal to the Privy Council must be made within six months from the date of decree. Such an application is not an appeal, and in computing the period of limitation, the time required for obtaining a copy of the decree cannot be excluded.

APPLICATION under section 598 of the Civil Procedure Code (Act XIV of 1882) for leave to appeal to the Privy Council.

The applicant (plaintiff) had obtained a decree in the lower Court⁽¹⁾. The defendant appealed, and the appeal Court varied the decree on the 16th March, 1894. The applicant (plaintiff) now desired to appeal to the Privy Council, and a petition for leave to appeal was now presented on his behalf. He had obtained a copy of the decree for the purpose of this appeal on the 9th July, 1894.

Macpherson objected:—This application is too late, and cannot now be granted. The application must be made within six months from the date of the decree (Schedule II of the Limitation Act, XV of 1877, article 177). The time, therefore, expired on the 16th September, 1894. The period cannot be extended, for sections 5 and 12 of the Limitation Act do not apply. This is not an appeal, and, therefore, in computing the period of limitation we cannot exclude the time requisite for getting a copy of the decree—*Anderson v. Periasami*⁽²⁾; *Lakshmanan v. Peryasami*⁽³⁾; *Jawáhir Lál v. Náráin Dás*⁽⁴⁾; *Sitá Rám Kesho's case*⁽⁵⁾.

Scott, for the applicant, *contra*:—This petition is the first step in an appeal, and is an appeal just as a memorandum of appeal is part of the appeal. This is evident from the words of section

* Suit No. 282 of 1892.

(1) I. L. R., 18 Bom., 474.

(3) I. L. R., 10 Mad., 373.

(2) I. L. R., 15 Mad., 169.

(4) I. L. R., 1 All., 644.

(5) I. L. R., 15 All., 14.

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603 of the Code. Sections 5 and 12 of the Limitation Act, therefore, apply.

SARGENT, C. J. :—The question arising here is whether sections 5 and 12 of the Limitation Act apply to an application for leave to appeal to the Privy Council. In deciding it we think we should read the Act as a whole, and not confine our attention merely to the sections referred to. The point is whether the petition now presented is to be regarded as an appeal or an application. If it is an appeal, it comes within the twelfth section, and its presentation is within time, and it is also within the fifth section, under which the period for its presentation may be extended. But reading the Act as a whole we must be guided in some degree by what we find in the schedule; and the schedule deals with an application of this kind as an “application,” and as something different from an appeal. The third division of the schedule is headed “Applications,” as distinguished from the second division, which is headed “Appeals.” We cannot treat as an appeal under the fifth or twelfth sections what would fall into the class of “Applications” in the schedule. We must give the Act as a whole its plain meaning, and reading the sections and the schedule together we must hold that this is not an appeal but an application, and that there is no provision which enables us to exclude from the period of limitation the time required for obtaining a copy of the decree or for extending the period of limitation under special circumstances.

We think that the petition is too late, and this application must be refused with costs.

Attorney for applicant (plaintiff) :—Mr. *Khanderao Moroji*.

Attorneys for opponent (defendant) :—Messrs. *Chitnis, Motilal and Malvi*.