

APPELLATE CIVIL.

Before Sir E. Jenkins, Chief Justice, and Mr. Justice Chandavarkar.

1901.
February 11.

GUKARAM GOPAL AND OTHERS (ORIGINAL DEFENDANTS), APPELLANTS,
v. PANDURANG SADARAM (ORIGINAL PLAINTIFF), RESPONDENT.*

Limitation Act (XV of 1877), sections 5 and 12—Appeal—Subsisting right of appeal—Application for copies—Exclusion of time in computing the period of limitation.

So long as the right of appeal is subsisting, an appellant is entitled under section 12 of the Limitation Act (XV of 1877) to apply for a copy of the lower Court's decree. The time requisite for obtaining such copy should be excluded in computing the period of limitation prescribed for the appeal.

Siyadat-un-nissa v. Muhammad⁽¹⁾ and *Sitarum v. Ramji*⁽²⁾ followed.

SECOND appeal from the decision of J. J. Heaton, District Judge of Násik, rejecting an appeal against the decision of Ráo Sáheb R. T. Kirtane, Subordinate Judge of Malegaon.

The plaintiff sued to recover Rs. 400 from the defendants due under a mortgage bond. A decree having been passed in plaintiff's favour, one of the defendants appealed to the District Court, which rejected the appeal as time-barred on the following grounds:

The decree was dated April 22nd. On April 23rd the vacation began and on June 5th, the day the Court reopened, the application for copy of decree was made. Before this last vacation it was not the custom to accept applications for copies during the vacation: but recently the High Court has ordered that such applications shall be received during vacation. This rule was in force during the last vacation. Appellant argues that this new rule was a change in a well-known custom and that he could not be expected to be aware of it and that his ignorance of and failure to conform to the new rule are sufficient cause within the meaning of section 5 of the Limitation Act. Had the appellant himself presented the application for a copy of the decree, I would have given consideration to this argument. But it was his pleader who presented it, in whose ignorance of the rule cannot be excused. Appeal rejected as time-barred. Costs on appellant, who must bear respondent's costs.

The defendants preferred a second appeal.

* Second Appeal No. 168 of 1900.

(1) (1897) 19 All. 342.

(2) (1900) P. J. p. 53.

Sadashiv R. Bakhle appeared for the appellants (defendants):— If we had presented the appeal on the day on which the Court reopened after the summer vacation, it would have been in time. The right of appeal was subsisting on that day under section 5 of the Limitation Act, and that being so, we had a right up to that day to obtain copies. Under section 12 of the Limitation Act we are entitled to deduct the time during which we may obtain copies. We are therefore entitled to deduct up to the 5th June, and we are in time—*Sitaram v. Ramji* ⁽¹⁾ in which *Siyadat-un-nissa v. Muhammad* ⁽²⁾ was followed.

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Mahadeo B. Chaubal appeared for the respondent (plaintiff):— The closing of the Court need not have prevented the appellants from making application for the copies. During the vacations the Courts are closed for judicial purposes only and not for formal purposes such as applications for copies.

CHANDAVARKAR, J. :—The decree in the suit out of which this second appeal arises was passed by the Second Class Subordinate Judge of Malegaon on the 22nd of April, 1899. His Court was closed from the next day to the 5th of June on account of the summer vacation. On the 5th of June, when the Court reopened, the present appellant applied for a copy of the Subordinate Judge's decree, and presented his appeal against that decree to the District Judge on the 14th of June.

The District Judge has rejected the appeal as time-barred on the ground that the appellant could have, according to a circular of this Court, applied for a copy of the Subordinate Judge's decree during the vacation as the office was open for that purpose.

Section 5 of the Limitation Act says that if the period of limitation prescribed for any appeal expires on a day when the Court is closed, the appeal may be presented on the day that the Court re-opens. In the present case, however, on the 5th June when the Court reopened, the appellant's right of appeal was subsisting, and so long as it was subsisting he was entitled under section 12 to apply for a copy of the decree and ask that the

(1) (1900) P. J. p. 52. (2) (1897) 19 All. 342.

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time requisite for obtaining it should be excluded in computing the period of limitation for the appeal. This was the view taken in *Siyadat-un-nissa v. Muhammad* ⁽¹⁾ and *Sitaram v. Ramji*. ⁽²⁾

Following those rulings we reverse the decree of the District Judge and remand the case, with a direction that the appeal be admitted and determined in accordance with law. Costs to abide the result.

Decree reversed and case remanded.

(1) (1897) 19 All. 342.

(2) (1900) P. J. p. 53.

APPELLATE CIVIL.

Before Sir L. Jenkins, Chief Justice, and Mr. Justice Chandavarkar.

1901.
March 11.

PANDHARINATH SAKHARAM (ORIGINAL PLAINTIFF 1), APPELLANT, v. SHANKAR NARAYAN JOSHI (ORIGINAL DEFENDANT), RESPONDENT.*

Limitation Act (XV of 1877), sections 5 and 12—Appeal—Exclusion of time for obtaining copies of judgment and decree appealed against.

An application for a copy of the decree may be made by an intending appellant at any time within the prescribed period of limitation, and he is then entitled under section 12 (in computing the period of limitation) to exclude the time requisite for obtaining such copy.

By section 5, in case the period of limitation prescribed for an appeal expires on a day when the Court is closed, the appeal may be presented on the day the Court re-opens. An application for a copy of the decree may be made on that day, and if so made, the time for obtaining such copy is excluded under section 12.

So long as the right to present an appeal subsists, the exclusion sanctioned by section 12 of the Limitation Act (XV of 1877) applies.

Siyadat-un-Nissa v. Muhammad Mahomed ⁽¹⁾ followed.

SECOND appeal against the decision of H. F. Aston, District Judge of Poona, dismissing an appeal against the decree of Ráo Sáheb K. R. Jalihal, Subordinate Judge of Khed.

The plaintiffs brought a suit to redeem and recover possession of certain property. The Subordinate Judge passed an instalment

* Second Appeal No. 605 of 1900.

(1) (1887) 19 All. 342.