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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.

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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 Rao Sahab 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.

decree in plaintiff's favour on the 10th April, 1900. Being dissatisfied with the decree the plaintiff appealed to the District Judge on the 31st May, 1900, that is after the expiration of the period of thirty days prescribed by article 152, schedule II of the Limitation Act, for presenting an appeal to the District Judge. The Judge dismissed the appeal as time-barred. The following is an extract from his judgment :

The judgment of the lower Court at Khed was given on 10th April and the Court was closed from 12th April to 29th May. Copy was not applied for till the 30th May at Khed. That was the day on which the appeal should have been presented.

It was therefore the appellant's own fault in not applying earlier for a copy of the judgment sought to be appealed against that his appeal was not presented in time.

This appeal is dismissed as barred by the law of limitation, there being no sufficient reason to excuse the delay.

Plaintiff 1 preferred a second appeal.

Shivram V. Bhandarkar for the appellant (plaintiff 1).

Ráo Báhádur *Ghanasham N. Nadkarni* for the respondent (defendant).

JENKINS, C.J. :—This is a second appeal from the decision of the District Judge of Poona, who dismissed the appeal to his Court as barred by the law of limitation.

On the 10th April, 1900, judgment in the suit was given by the lower Court at Khed. On the 12th April that Court was closed and so remained until the 29th May. On the 30th May, the day of re-opening, an application was made for a copy of the decree: it was obtained on the 31st and on the same day the appeal was presented.

Under the Indian Limitation Act of 1877 an appeal to the Court of a District Judge must be presented within thirty days from the date of the decree appealed against. By section 12 of the Act, however, it is provided that in computing the period of limitation prescribed for an appeal, the day on which the judgment complained of was pronounced, and the time requisite for obtaining a copy of the decree appealed against shall be excluded: and it is clear that this exclusion can be claimed on

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whatever day the application is made within the prescribed period of limitation, even though it be on the last.

Then again it is provided by section 5, 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 the Court re-opens. The only question is whether the right thus reserved to a would-be appellant entitles him to the exclusion of the time requisite for obtaining a copy of the decree when he makes his application for that purpose on the day the Court re-opens. It may be said that section 5 does not extend the period of limitation, but merely permits the appeal to be presented on a particular day outside the period of limitation, and it must be conceded that ground for such an argument is to be found in the phraseology of the Act. On the other hand, it may be said that such an interpretation adheres too much to the letter of the Act, and that if the application for copies is made at any time when the right to present an appeal subsists the exclusion sanctioned by section 12 applies.

It is a matter of no great importance which view be taken of the Act, so that the point be settled one way or the other. Now as far back as the 17th of March, 1897, a Division Bench of the Allahabad High Court after a full and careful consideration of the matter decided in favour of the second view (*Siyadat-un-Nissa v. Muhammad Mahomed* (1)), and, as far as we are aware, in no reported case has dissent from that view been expressed. In fact on more than one occasion that decision has been accepted as an authority in this Court.

Under these circumstances we think we should, notwithstanding all that may be urged on the other side, refrain from disturbing this rule of practice and should adhere to the decision of the Allahabad High Court.

Therefore the decree of the District Judge should be set aside and the case remanded to the lower appellate Court for trial according to law. The costs of this appeal will abide the event.

Decree reversed.

(1) (1897) 19 All. 342.