APPELLATE CIVIL

FULL BENCH

Before Mr. M. C. Chagla, Chief Justice, Mr. Justice Coyajee and Mr. Justice Gajendragadkar.

1951 July 31

JAYASHANKAR MULSHANKAR MEHTA AND ANOTHER (ORIGINAL PLAINTIFFS), APPELLANTS *v.* SHAH MAYABHAI LALBHAI (ORIGINAL DEFENDANT), RESPONDENT.*

Indian Limitation Act (IX of 1908), s. 12 (2)—Computation of period of limitation for appeal—Whether time taken for signing decree appealed from is to be excluded.

In computing the period of limitation prescribed for an appeal, the time properly taken for the preparation of the decree and the time which lapses between the pronouncement of the judgment and the signing of the decree should be excluded under s. 12 (2) of the Indian Limitation Act, 1908. But it is not necessarily the whole of the time that must be excluded in every case. If it is established to the satisfaction of the Court that in any particular case the whole of the time was not properly required for the purpose of preparing the decree, then such time as was not properly required would not be excluded.

Equal emphasis should be placed on both the expressions "requisite" and "obtaining" used in sub-s. (2) of s. 12 of the Limitation Act. What has got to be excluded is the time which is properly required and the time which has got to be so excluded is the time which is necessary for obtaining a copy of the decree.

Kanji Devsi v. *Velji Haridas*,[1] *The Secretary of State for India in Council* v. *Parijat Debee*,[2] and *Gabrial Christian* v. *Chandra Mohan Missir*,[3] followed.

Bhausaheb Jamburao v. *Sonabai*,[4] explained.

Umda v. *Rupchand*,[5] *Keshar Sugar Works* v. *R. C. Sharma*,[6] dissented from.

Murlidhar v. *Motilal*,[7] *Balappa Tammanna* v. *Dyamappa Bhuasappa*,[8] and *Pramatha Nath Roy* v. *Lee*,[9] referred to.

A judgment was delivered by the trial Court on May 1, 1948. The decree was signed by it on June 29, 1948, and an appeal from the decree was preferred to the District Court on August 4, 1948. The appellants had applied for certified copies of the judgment and the decree on June 17, 1948, and the certified copies were ready on July 7, 1948. It was found as a fact that the appellants were not in default in the delay that took place in the signing of the decree but their appeal could only be in time if the period taken for signing the decree were to be excluded

* Letters Patent Appeal No. 25 of 1950.

(1) (1950) 52 Bom. L. R. 405.
(2) (1932) 59 Cal. 1215, (F. B.).
(3) (1935) 15 Pat. 284 (F. B.).
(4) (1945) 48 Bom. L. R. 97.
(5) [1927] A. I. R. Nag. 1 (F. B.).
(6) [1951] A. I. R. All. 122 (F. B.).
(7) (1936) 39 Bom. L. R. 32, F. B.
(8) (1940) 42 Bom. L. R. 872.
(9) (1922) L. R. 49 I. A. 307.

in computing the period of limitation. On the question whether the appeal was in time:

Held, that the appeal was preferred in time as the period between May 1, 1948, and June 29, 1948, was a period requisite for obtaining a copy of the decree within the meaning of s. 12 (2) of the Limitation Act and the whole of that period ought to be excluded.

LEETERS PATENT APPEAL from the decision of Dixit J. in Second Appeal from the decision of M. S. Patil, Esquire, District Judge at Ahmedabad against the decree passed by A. K. Pathan, Esquire, Fourth Joint Civil Judge (Junior Division) at Ahmedabad.

Suit for possession.

One Jayashankar (plaintiff No. 1) and his son Girjaprasad (plaintiff No. 2) filed a suit in ejectment against Shah Mayabhai (defendant) *inter alia* on the ground that the suit premises were required for their bona fide and personal use and occupation. The suit was dismissed by the trial Court on May 1, 1948, but the decree was actually signed by the Judge on June 29, 1948. The Court had re-opened after six weeks of Summer vacation on June 14, 1948, and the plaintiffs had already applied for copies of the judgment and decree on June 17, 1948. The copies of the judgment and decree were ready for delivery on July 7, 1948, but the plaintiffs took delivery thereof on July 21, 1948. They preferred an appeal from the decree to the District Court on August 4, 1948.

On appeal a preliminary point was taken by the defendant that the appeal was not filed in time. The District Judge upheld the defendant's objection and dismissed the appeal as having been filed beyond time, observing in his judgment as follows:

"The appellants applied for copies of the judgment and decree 16 days after the ordinary period of limitation had expired. This is excusable in a way. Even if this conduct is condoned as being excusable still the appellants are unable to explain the delay caused by them in taking late delivery of copies on July 21, 1948 even though the copies were kept ready for delivery on July 7, 1948. They had ample time till July 28, 1948, to get legal advice and file the appeal in time on or before July 28, 1948. It cannot be said that the entire period from the date of signing of the decree to the date of the filing of the appeal was the time requisite within the meaning of s. 12 of the Indian Limitation Act, as argued on behalf of the appellants. On a liberal construction of the provisions of s. 12 of the Indian Limitation Act the appellants could get time till July 28, 1948, for filing the appeal. They failed to file the appeal in time. The appeal filed on August 4, 1948, is found to be barred by limitation. The preliminary objection, therefore, succeeds. The result is that the appeal is required to be dismissed as barred by limitation."

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The plaintiffs appealed to the High Court. The appeal was heard by Dixit J. on December 9, 1949, when his Lordship concurred with the lower Court's view and dismissed the appeal by delivering the following judgment:

DIXIT J. This second appeal raises a question of law which is whether an appeal filed by the plaintiffs-appellants in the District Court, Ahmedabad, was in time. The facts of the case about which there is no dispute are these.

The plaintiffs-appellants filed in the Court of the 4th Joint Civil Judge, J.D., civil suit No. 1072 of 1947, which was a suit to recover possession of the property in suit. The property in suit was a bungalow, situate in Tolaknagar, Ellis Bridge, Ahmedabad. The trial Court delivered judgment on May 1, 1948, dismissing the suit. The date of the judgment is, therefore, May 1, 1948. According to O. XX, r. 7, of the Code of Civil Procedure, the decree shall bear date the day on which the judgment was pronounced, and, when the Judge has satisfied himself that the decree has been drawn up in accordance with the judgment, he shall sign the decree. In this case the decree was signed on June 29, 1948. But in view of O. XX, r. 7, the date of the decree must be the date of the judgment which is May 1, 1948. The unsuccessful plaintiffs if they desired to prefer an appeal, have to prefer it within thirty days under art. 152 of the Indian Limitation Act and the time from which the period begins to run is the date of the decree or order appealed from. It is obvious, therefore, that if the plaintiffs wanted to prefer an appeal against the decree, they should have done so within thirty days from May 1, 1948. The plaintiffs filed the appeal on August 4, 1948. Now, under s. 12 of the Indian Limitation Act the plaintiffs are entitled to exclusion of time and s. 12 (2) provides:

> "In computing the period of limitation prescribed for an appeal, an application for leave to appeal and an application for a review of judgment, the day on which the judgment complained of was pronounced, and the time requisite for obtaining a copy of the decree, sentence or order appealed from or sought to be reviewed, shall be excluded."

In this case the plaintiffs applied for certified copies of the judgment and the decree on June 17, 1948, and the certified copies were ready on July 7, 1948. That gives the plaintiffs a period of twenty-one days in addition to thirty days allowed to them under art. 152 of the Act.

It so happened, however, that although the judgment was pronounced on May 1, 1948, and although May 1, 1948, is the

date of the decree, the decree was not signed by the Judge until June 29, 1948. The interval between May 1, 1948, and June 29, 1948, is an interval of 59 days and the question is whether the plaintiffs are entitled to the whole of the period of 59 days. I should have mentioned that the copies were delivered to the plaintiffs on July 21, 1948, but the period between July 7, 1948 and July 21, 1948, is a period to which the plaintiffs are not entitled, and this is not disputed.

The learned District Judge took the view that the appeal was not filed in time, and if I understand the judgment correctly, he takes the view that the plaintiffs should have filed the appeal on or before July 28, 1948. If I say that I do not understand the date July 28, 1948, on or before which the plaintiffs should have filed the appeal, I should be excused for saying so. The plaintiffs are entitled, in the first instance, to a period of thirty days under art. 152 of the Indian Limitation Act. The plaintiffs are next entitled to a period of twenty-one days in this case which was the period required for obtaining the certified copies of the judgment and the decree. The learned District Judge seems to have fixed July 28, 1948, apparently for the reason that the copies were ready on July 7, 1948, and it took twenty-one days for the copies to be ready. He added the twenty-one days from July 7, 1948, so as to make the last date as July 28, 1948, for filing the appeal. He also took the view that it was not necessary for the plaintiffs to wait until July 21, 1948, in order to take delivery of the copies, and with him I agree. The learned Judge also took the view that the plaintiffs did not exercise due diligence in obtaining the copies of the judgment and the decree and he seems to have taken the view that:

> "It cannot be said that the entire period from the date of signing of the decree to the date of the filing of the appeal was the time requisite within the meaning of s. 12 of the Indian Limitation Act."

In the result, he held that the appeal must be dismissed as barred by limitation. Alternatively, he held that he was not prepared to excuse the delay under s. 5 of the Indian Limitation Act, and so the appeal was time-barred.

Mr. Diwan who appears for the appellants in this case questions the correctness of the decision. Now, s. 12 (2) of the Indian Limitation Act uses the words "the time requisite for obtaining a copy of the decree." In *Surty* v. *Chettyar*[1] their Lordships of the Privy Council explained the word "requisite" and this is what the head-note to that case says:

[1] (1928) L. R. 55 I. A. 161, s. c. 30 Bom. L. R. 842.

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"The word 'requisite' means 'properly required' and throws upon the appellant's legal advisers the necessity of showing that no part of the delay beyond the prescribed period is due to their default."

This makes two things clear: (1) the word "requisite" means "properly required" and not merely "required" and (2) the onus is upon the appellant's legal advisors to show that no part of the delay beyond the prescribed period is due to their default. This decision was cited in the full bench case *Murlidhar* v. *Motilal.*[1] The head-note to that case is in the following terms:

"In computing the time for appealing from a decree, it is legitimate (in a proper case) to exclude the period requisite for obtaining a copy of the decree when no application for such copy has been made till after the expiration of the time limited for appeal.

The question whether the time was requisite is always one of fact to be decided in the circumstances of each case."

When, therefore, one reads *Surty's* case and *Murlidhar's*[1] case together, one gets these three principles established: (1) the time requisite means "time properly required," (2) it is for the party to show that no part of the delay beyond the prescribed period is due to his default and (3) the question whether the time was requisite is always one of fact to be decided in the circumstances of each case. Then we have a decision of the learned Chief Justice, Sir John Beaumont, and Mr. Justice Sen, which is reported in *Balappa Tammanna* v. *Dyamappa Bhusappa*[2]. The head-note to that case is in the following terms:

"In presenting an appeal the appellant is entitled to deduct from the period of limitation for filing his appeal not only the time requisite for obtaining a copy of the decree appealed against but also the time taken by the Court in signing the decree."

It is to be noted that in this last mentioned case neither *Sutry's* case nor the full bench case, *Murlidhar* v. *Motilal*,[1] has been referred to. The last of the cases upon the subject is to be found in the case of *Bhausaheb Jamburao* v. *Sonabai.*[3] The head-note to that case is in the following terms:

"Having regard to the fact that some time is bound to be taken up between the passing and signing of the decree appealed from, if the applicant for leave to appeal to His Majesty in Council waits for a reasonable time in applying for copies, he would be entitled to include that time in the period requisite under s. 12 of the Indian Limitation Act, 1908. If, however, he waits for an unreasonable time in applying for copies, he will not be able to include that period within the requisite time. Each case has to be decided on its own facts.

[1] (1936) 39 Bom. L. R. 32, F. B. [2] (1940) 42 Bom. L. R. 872.
[3] (1945) 48 Bom. L. R. 97.

The word 'requisite' in s. 12 means not only merely 'required' but 'properly required'. It throws upon the appellant the necessity of showing that no part of the delay beyond the prescribed period was due to his default and that he was not responsible for the time taken by the officials of the Court in preparing and issuing the copies required."

It will appear from page 98 of the report that Mr. Justice Divatia who delivered the judgment of the Court noticed *Balappa Tammanna's* case[1] and after referring to the case in question it was observed:

"We think the head-note is too wide and is not in accordance with the actual decision in the case."

It is also observed (p. 98):

".....This decision does not, in our opinion, lay down that in every case a party is entitled, as a matter of right, to the benefit of the interval between the passing of the decree and its being signed."

Then at p. 99 of the report this is what is stated:

".....The Privy Council case of *Jijibhoy* v. *Chettyar*[2] has been construed by this Court in *Balappa Tammanna's case*[1]. and in our opinion the effect of the law as stated by our Court is that having regard to the fact that some time is bound to be taken up between the passing and the signing of the decree, if the applicant waits for a reasonable time in applying for copies, he would be entitled to include that time in the period requisite under s. 12 of the Indian Limitation Act. If, however, he waits for an unreasonable time in applying for copies, he will not be able to include that period within the requisite time. So that each case is to be decided on its own facts. In the present case, as I said, the period between the passing of the decree and the application for the certified copies is, in our opinion, unreasonable, and, therefore, the petitioner would not be entitled to the benefit of that period as a matter of right."

This case, therefore, lays down two further principles: (1) a party is not entitled, as a matter of right, to the benefit of the interval between the passing of the decree and its being signed, and (2) in order that a party is entitled to claim exclusion of time, the party may wait for a reasonable time in applying for copies. Then there is an unreported decision given by Mr. Justice Macklin, to which I was a party, on November 19, 1946, in *Vedu Hiraman* v. *Jaykishan Rambillas.*[3] In that case the rule laid down is as follows:—

"Subject to the restriction that any delay, whether in the issue of the decree or in the furnishing of copies, which is due to the appellant's own fault cannot be regarded as time requisite for obtaining copies within the meaning of s. 12, we think that normally the appellant is entitled

[1] (1940) 42 Bom. L. R. 872.
[2] (1928) 30 Bom. L. R. 842, P.C.
[3] (1946) S. A. No. 1001 of 1946, decided by Maclin and Dixit, JJ., on Nov. 19, 1946 (unrep.).

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to have the time between the date of the judgment and the date of the issue of the decree treated as time requisite for obtaining copies, and that it should be so treated unless circumstances to the contrary are clearly apparent."

The principle to be deduced from the case is that a party is entitled to the whole of the period between the date of the judgment and the date of the issue of the decree, unless circumstances to the contrary are clearly apparent.

It is in the light of the principles set out above that the question in this appeal has to be decided. Now, as I have already stated, there can be no dispute that the plaintiffs are entitled to a period of thirty days under art. 152. There can equally be no dispute also about the twenty-one days which was the period required for obtaining the certified copies of the judgment and the decree, and the question is whether the plaintiffs are entitled to the whole of the period of 59 days which is a period between the date of the decree and the date of the signing of the decree. Now, in view of the authorities which are binding upon me, I must hold that the appellants are not entitled to the whole of the period as a matter of right. The question then is to what portion of the period are the appellants entitled. Now, in this case the suit was one for possession and the suit was dismissed. The plaintiffs had thirty days within which to appeal or within which to make up their mind as to whether they should appeal or not. But in this case the plaintiffs were not able to make up their mind until June 17, 1948, when they applied for copies. Even then one cannot say that plaintiffs had decided to prefer an appeal. But since they applied for copies of the judgment and decree, one may assume that they had made up their mind to prefer an appeal. Now, in this case the suit was one for possession and the suit was dismissed, and I apprehend that the decree would, under no circumstances, be a complicated one. It is true that until the decree is signed the document known as a decree which bears the date of the judgment is a non-existent document. But a party can reasonably know as to what the decree is going to be like and it may be that until the decree is signed a party is not in a position to obtain a certified copy of the same. But that does not mean that a party is not able to make an application for a certified copy of the decree. Now, in this case the office of the trial Court took 59 days for the preparation of a decree in a suit which was dismissed. It is, to my mind, an amazing period for which no reasons are forthcoming. It is also, to some extent,

amazing that the plaintiffs in this case should not have been in a position to make up their mind, whether they should appeal or not, until June 17, 1948, when they applied for copies. The plaintiffs had a period of thirty days within which to prefer an appeal. I should imagine that if that is the period of limitation, a party should and would make up its mind whether to appeal or not from a decree. But in this case the Court, it appears, was closed between May 3, 1948, and June 14, 1948, and there may be some explanation as to why the plaintiffs were not able to make up their mind, but, I am unable to understand as to why within the period of thirty days, which is a pretty long period, the plaintiffs should not have made an application for certified copies of the judgment and decree, and as held in the case of *Bhausaheb Jamburao*,[1] a party is entitled to wait for a reasonable time in order to make an application for certified copies. Can it be said in this case that the period of 47 days is a reasonable period within which to make an application for certified copies of the judgment and decree? It may be said in favour of the plaintiffs that the plaintiffs are not at default if the decree is not prepared and signed by the Judge. In cases coming from the mofussil the preparation of decrees is left to the office of the Court and this is unlike cases upon the Original Side of this Court where draft decrees are prepared by solicitors and after they are approved they are lodged with the Prothonotary and then the decrees are finally sealed. Now, in this case it is not suggested that the period of 59 days which was required for the preparation of the decree was necessary owing to any act or omission on the part of the plaintiffs or their pleader. It seems from the original decree that the pleader for the plaintiffs signed the decree on June 28, 1948, and the learned Judge signed the decree on June 29, 1948, and if any portion of the time is due either to an act or omission on the part of a party or his pleader, then certainly that portion cannot be allowed to be excluded under s. 12. But in favour of the plaintiffs it may be said that if the plaintiffs have not contributed to this long delay in preparation of the decree, there is no reason why they should not be entitled to the whole of the period. As against this view are these considerations: (1) the plaintiffs are not entitled to the whole of the period as laid down in *Bhausaheb Jamburao* v. *Sonabai*[1] and as also held in that case, (2) the plaintiffs are entitled only to a reasonable portion of the time. If the whole

[1] (1945) 48 Bom. L. R. 97.

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of the period of 59 days is allowed, then in that event the plaintiffs would be getting thirty days under art. 152, twenty-one days under s. 12 (2) and 59 days because that was the time required in the office of the learned Judge to prepare the decree. The appeal was filed on August 4, 1948, and if this total period is allowed, then in that case the appeal would be well within time.

Mr. Shah on behalf of the respondent contends that the plaintiffs are not entitled to the whole of the period between the date of the decree and the date of the signing of the decree, and, in my opinion, his contention is supported by authority. If 59 days are allowed to the plaintiffs, then in that event the plaintiffs will be allowed 30 days *plus* 59 days composed of 30 *plus* 29 days, and Mr. Shah says that this is in any case not justified. In my opinion, therefore, if the plaintiffs are entitled not to the whole of the period but only to a period which is reasonable, and that is the meaning of the expression "requisite" in s. 12 of the Indian Limitation Act, it seems to me that the plaintiffs' appeal must be held to be filed beyond the period of limitation. The question whether the plaintiffs are entitled to the whole of the period is a contention which is, in the first instance, for the party to establish, and in this case as I am satisfied that the plaintiffs did not exercise due diligence in making an application for certified copies of the judgment and decree, the plaintiffs would not be entitled to the whole of the period under s. 12 (2) as time requisite in order to bring the appeal within time. Supposing in this case the plaintiffs had applied for copies within the period of the limitation, the matter would have been different, but in this case the plaintiffs waited for an unreasonably long time for making an application for certified copies of the judgment and decree and it seems to me that under those circumstances the present case falls within the rule laid down in *Surty's* case[1].

For the reasons given above I must hold that the lower Court was right in holding that the plaintiffs' appeal was not filed in time.

The plaintiffs relied in the lower Court upon s. 5 of the Act, but the learned District Judge was not satisfied that the present was a case in which he should excuse the delay. Now, if the learned District Judge has not thought fit to exercise his discretion under s. 5 of the Indian Limitation Act, there is no

[1] (1928) L. R. 55 I. A. 161.

reason why I should substitute my discretion in place of his discretion in the matter. It seems to me that, therefore, there is no case for the application of s. 5 of the Act.

The result is that the appeal fails and the same will be dismissed with costs.

The plaintiffs preferred an appeal under the Letters Patent.

B. J. Diwan, with *B. G. Thakore,* for the appellants.

N. C. Shah, for the respondent.

B. J. Diwan. This is a case from mofussil where the parties have not to play any part in the framing of the decrees. Admittedly, therefore, none of the delay in signing the decree was caused by any default on the part of the appellants. The only question for decision is whether the appellant is entitled to whole of the time taken up in signing the decree although he had not applied for a copy of it within thirty days which was the prescribed period of limitation. My submission is that he was entitled to wait until the original decree came into existence because till then there was no point in his making any application. This principle has been accepted by our High Court in *Murlidhar v. Motilal* [(1936) 39 Bom. L. R. 32 (F.B.)] *Balappa* v. *Dyamappa* [(1940) 42 Bom. L. R. 872] and *Vedu Hiraman v. Jaikisan Rambilas* [S. A. No. 1001 of 1946, decided by Macklin and Dixit JJ., on November 19, 1946 (Unrep.)].

Bhausaheb v. *Sonabai* [(1945) 48 Bom. L. R. 97] is wrongly decided because in that case their Lordships have proceeded to find out whether the period between the signing of the decree and the application for certified copies was reasonable or not. That obviously is wrong because that period is not to be excluded in any event.

All the High Courts except the Allahabad have taken the view which I am contending for. See *The Secretary of State for India in Council* v. *Parijat Debee* [(1932) 59 Cal. 1215 (F. B.)]; *Sarat Chandra* v. *Rati Kanta* [A. I. R. 1939 Cal. 711]; *Gabriel Christian* v. *Chandra Mohan Missir* [(1935) 15 Pat. 284 (F.B.)] *Umda v. Rupchand* [A. I. R. 1927 Nag. 1 (F. B.]; and *Jadhubir Singh* v. *Sheo Naresh Singh* [(1943) 19 Luck. 456].

On the plain construction of s. 12 of the Limitation Act, the time taken for preparing the original of the decree must also be taken as the time requisite for obtaining a copy of the decree. The emphasis is on the word "requisite". The Allahabad High Court lays emphasis on the word "obtaining". See

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Keshar Sugar Works v. *R. Ç. Sharma* [A. I. R. 1951 All. 122 (F. B.)].

N. C. Shah. Murlidhar v. *Motilal* [(1936) 39 Bom. L. R. 32 (F. B.)] was a case from the Original Side of the High Court. On the Original Side the parties themselves have to move the Court for drawing up the decree and that was done by the appellant in that case within the prescribed period. In mofussil the practice is different and this difference has been noted by Beaumont C. J. at page 42 of the report.

My submission is that s. 12 of the Limitation Act correlates to O. XX, r. 7 of the Civil Procedure Code, and as soon as the judgment is delivered the decree also comes into existence notionally. That being so some overt act by the party must precede the starting of time requisite for obtaining a copy. The words in the section are "time requisite for obtaining a copy" and not "time requisite for giving a copy" and, therefore, the parties are not entitled to any time taken up by the Court before the application. The party must take some action before he can say that the particular time was required for obtaining the copies. I submit that the Allahabad view is decree.

In the present case the appellants did not wait till the signing of the decree before they applied for copies. That shows that no part of the time was required for studying the decree.

B. J. Diwan, was not called upon in reply.

CHAGLA C. J. The question that we have to consider in this full bench is whether the time that elapses between the pronouncement of the judgment and the signing of the decree should be excluded under s. 12 (2) of the Indian Limitation Act, and if it is to be excluded whether it should be excluded wholly or should be excluded under certain limitations. The facts that give rise to this full bench may be briefly stated. The trial Court delivered its judgment in Ahmedabad on May 1, 1948. The decree was signed on June 29, 1948. The plaintiffs filed the appeal to the District Court on August 4, 1948, and the question that arose was whether the appeal was in time. The learned District Judge took the view that the appeal was out of time and the same view was taken by Mr. Justice Dixit in second appeal. Mr. Justice Dixit gave leave under the Letters Patent and the matter came before a

divisional bench which referred the question to a full bench. A further fact may be stated which is also material that the plaintiffs applied in this case for certified copies of the judgment and the decree on June 17, 1948. The certified copies were ready on July 7, 1948. The appeal would only be in time if the period between May 1 and June 29, 1948, a period of 59 days, is to be excluded. If that period is not to be excluded, then the appeal would be out of time.

Now, before considering the authorities which were cited at the bar, it would be perhaps better to look at this section itself and to see what is the true position under that section on an interpretation of that section in the light of the language used by the Legislature. Section 12 (2) provides that in computing the period of limitation prescribed for an appeal, (and I am using the material words) the time requisite for obtaining a copy of the decree appealed from shall be excluded. It is well settled that the time requisite is not the time actually taken but it is the time properly required. The question that raises certain amount of difficulty is whether the time that is required for preparing a decree is a time of which it could be said that it is a time requisite for obtaining a copy of a decree. Two views are possible. One view is that the time taken for preparing the original, of which a copy is to be obtained, must necessarily be the time requisite for obtaining a copy of the original. This view puts greater emphasis on the expression "requisite" than on the expression "obtaining" used in this sub-section. The other view is that unless the appellant takes some step in order to obtain a copy of the decree, it could not be said that the time which expired before he took that step was a time requisite for obtaining a copy of the decree. In other words, although the decree was not ready, if the appellant did not apply for a copy, the time taken for preparing the decree could not be excluded, because the appellant had not taken any step for obtaining the decree. In our opinion, equal emphasis should be placed on both the expressions used in this sub-section. What has got to be excluded is the time which is properly required, and the time which has got to be so excluded is the time which is necessary for obtaining a copy of the decree. It is difficult to understand why the action on the part of the appellant in applying for a copy of the decree should be a decisive factor in considering whether time should be excluded under this sub-section or not. It is also difficult to understand why an appellant should apply for a copy of a

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prepared or signed by the Judge. It would seem that if the appellant had applied for a copy of a decree which was not ready, then the time taken up to prepare the decree would have been excluded, but merely because he did not apply for a copy that time should not be excluded. It seems to us that it is rather futile on the part of the appellant to apply for a copy when in fact the original is not ready and when in fact no copy of the original could be given to him. From this it does not follow that the whole of the time required for preparing the decree should necessarily be excluded in every case. We may have a case where the preparation of the decree is entirely left to the Court, where the intervention of the parties is not at all necessary, and all the time spent for the preparation of the decree is the result of what the Court has got to do and the various steps that the Court has to take. In a case like this it may be that the whole time would have to be excluded. But we may have a case where the intervention of the party is necessary in order to prepare the decree. Various steps might have to be taken by the parties or their lawyers before a decree could be ready and before it could be signed. In a case like this the Court would have to consider whether any of the time taken up for the preparation of the decree could be attributed to the fault or negligence of the appellant. If any of the time could be so attributed, then that time could not be excluded under s. 12 (2). A case like this frequently arises on the Original Side of this Court where decrees have got to be drawn up by solicitors, where drafts are considered, where various appointments are to be made with the Prothonotary and so on and so forth. Therefore, a question like this as to whether the whole of the time is to be excluded or not would become more material on the Original Side than perhaps on the Appellate Side where decrees are drawn up more by the Court than with the assistance of the parties or through the intervention of the parties. Even in the Districts, if it is established that by a rule or practice of the Court lawyers have to sign decrees before the draft of a decree is put up before the Judge for his signature, then if any time has been unduly taken up by the lawyers in signing the decree, such time might have to be excluded. Therefore, apart from authorities, with which we shall presently deal, the view we take on a construction of this section is that the time properly taken for the preparation of the decree and the time which elapses between the pronouncement of the judgment and the signing of the decree should be excluded under s. 12 (2) of the

Limitation Act. We advisedly use the word "properly" because it is not necessarily the whole of the time that must be excluded in every case. If it is established to the satisfaction of the Court that in any particular case the whole of the time was not properly required for the purpose of preparing the decree, then such time as was not properly required would not be excluded under s. 12 (2) of the Limitation Act.

Turning to the authorities, we have a decision of a full bench of this Court in *Murlidhar* v. *Motilal.*[1] The question that strictly fell to be determined in that case was whether an application for a copy of a decree could be made after the period of limitation, and the full bench came to the conclusion that such an application could be made. Therefore, the question that we have to consider in this full bench did not directly arise for decision. It will also be noticed that on a consideration of the dates mentioned the appeal in that particular case would have been in time, even if the period taken up for the preparation of the decree had not been excluded. Therefore, this particular point was not even necessary for the determination of the question which that full bench actually considered and decided. But there are weighty observations of the learned Chief Justice in that case to which it is necessary to refer. At p. 43 the learned Chief Justice says:

> "It is, no doubt, self-evident that a copy cannot be supplied of a decree which does not exist";

and later on he says (p. 43):

> "In my opinion, if the time actually required for obtaining a copy of the decree has been increased by the default of the appellant in getting the decree settled, then the time taken for obtaining a copy of the decree was not requisite within the meaning of s. 12."

Therefore, the learned Chief Justice accepts the proposition that it is not necessary to apply for a copy of a decree which does not exist, and he also accepts the proposition that if time for obtaining the decree has been increased by the default of the appellant in getting the decree settled, that time cannot be considered to be requisite time within the meaning of s. 12. This decision was followed by a decision in *Balappa Tammanna* v. *Dyamappa Bhusappa,*[2] to which the learned Chief Justice was a party. It is important to note that in that case the appeal would not have been in time unless the period between the pronouncement of the judgment and the signing of the decree, which was 14 days, had not been excluded. But there

[1] (1936) 39 Bom. L. R. 32, F. B. [2] (1940) 42 Bom. L. R. 872.

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are certain observations of the learned Chief Justice with which, with respect, we do not agree. The learned Chief Justice suggests that even after the decree is signed and is ready, a party may require some time to consider the decree and to obtain the advice of his lawyer, and such time may be excluded under s. 12 (2). In our opinion, no time beyond the time actually required for the preparation of the decree can be excluded within the meaning of s. 12 (2).

Reliance was placed on a decision of Mr. Justice Divatia and Mr. Justice Bavdekar in *Bhausaheb Jamburao* v. *Sonabai*[1] and Mr. Shah contends that that decision is in favour of the view for which he contends, viz., that the period between the pronouncement of the judgment and the signing of the decree cannot be excluded under s. 12 (2) of the Limitation Act. In that case the dates are rather material. The judgment was given on July 12, 1943, and the decree was drawn up by the office and signed by the advocates on the 19th, and the decree was signed by the Registrar on September 8. Therefore, the decree was signed and ready on September 8. The appellant applied for certified copies of the judgment and the decree on October 2, and the certified copy of the decree was ready on October 20 and the certified copy of the judgment was ready on November 4. That was a case of an application for leave to appeal to the Privy Council, and the application was filed on November 26, the period of limitation being 90 days under art. 179. The learned Judges did consider the question as to whether the period between July 12 and September 8 should be excluded or not because they dealt with the decision in *Balappa Tammanna's*[2] case and they observed (p. 98):

> "This decision does not, in our opinion, lay down that in every case a party is entitled, as a matter of right, to the benefit of the interval between the passing of the decree and its being signed."

But having considered that judgment, with respect, they failed to apply the test laid down either in that judgment or in *Murlidhar* v. *Motilal*[3] to the facts before them. They did not consider whether in that particular case the period between July 12 and September 8 should or should not be excluded. The only point they considered was whether the period between September 8 and October 2 should be excluded, and taking the view that the time that expired was not a reasonable one and no explanation was given as to why that time

[1] (1945) 48 Bom. L. R. 97. [2] (1940) 42 Bom. L. R. 872.
[3] (1936) 39 Bom. L. R. 32, F. B.

had been taken up before an application for certified copy was made on October 2, they came to the conclusion that that period should not be excluded. With respect, they were only dealing with one aspect of the decision in *Balappa Tammanna's, case*[1] an aspect with which we have just dealt and an aspect which has not appealed to us because that aspect was that some time may be excluded after the decree was ready if time was necessary for studying the decree or consulting a lawyer. But this decision cannot be read as laying down one way or the other as to whether the period between the date when the judgment was pronounced and the date when the decree was signed should or should not be excluded.

Then there is the recent judgment of a division bench in *Kanji Devsi* v. *Velji Haridas,*[2] to which myself and my brother Ganjendragadkar J. were parties. At p. 407 in delivering the judgment of the Court I observed:

> ".....Therefore, applying that test, we have first the position that the decree was not signed till October 22, 1948, and, therefore, no copy of the decree could have been supplied and the time taken between September 29, 1948, when the judgment was pronounced and October 22, 1948, when the decree was signed must be excluded. If authority was required for the proposition, see *Balappa Tammanna* v. *Dyamappa Bhusappa.*[1]"

In that particular case we were considering the question of the overlapping of time and we held that time could not be allowed to overlap when two separate applications were made for a copy of the judgment and a copy of the decree. But there is this observation of ours which may lead one to think that we were laying down a categorical rule that in every case the time taken between the pronouncement of the judgment and the signing of the decree should be excluded. As we have just pointed out, we are not laying down any unqualified rule. In ordinary cases it may be that such a time would be excluded, but there may be cases where the Court would have to scrutinize whether the whole of the time was properly required or not.

Turning to the judgments of the other High Courts, we have the judgment of a full bench of the Calcutta High Court in *The Secretary of State for India in Council* v. *Parijat Debee.*[3] There the learned Judges were dealing with an appeal from the Original Side and the principle they laid down is, with respect, the principle to which we ourselves have just subscribed,

[1] (1940) 42 Bom. L. R. 872. [2] (1950) 52 Bom. L. R. 405.
[3] (1932) 59 Cal. 1215, F. B.

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and what they said was that in an appeal from the Original Side the appellant is as of right entitled to the exclusion of such time as is properly required for the drawing up of the decree or order, assuming that no part of the delay, if any, is due to his default. Now, the learned Chief Justice Sir John Beaumont in *Murlidhar* v. *Motilal*, with respect to him, was not quite fair to the Calcutta High Court. He read the decision of the Calcutta High Court to mean that the requisite time for obtaining a copy of the decree in no case begins to run until the decree has been sealed. The Calcutta High Court has not laid down this principle in the categorical unqualified terms which the learned Chief Justice thought that Court was laying down. As I have just pointed out, the rule is laid down with the necessary and important qualification that no part of the delay should be due to the default of the appellant.

Then there is a judgment of the full bench of the High Court of Patna in *Gubriel Christian* v. *Chandra Mohan Missir*.[1] At first blush it may appear that the Patna High Court was in favour of the exclusion of the time between the pronouncement of the judgment and the signing of the decree in unqualified terms. But a little more careful study of the judgment shows that that is not so because this categorical exclusion should only be availed of, according to the Patna High Court, when the decree of the trial Court follows upon the judgment without the parties being required to do anything in the interval. In such cases, according to the Patna High Court, the appellant will be entitled to the exclusion of the time between the judgment and the decree, and then the Patna High Court points out (p. 294):—

> ".....In exceptional cases, such (for instance) as cases of partition and mesne profits, the drawing up of the final decree may depend upon the filing of the necessary stamp paper of Court-fees; in such cases the exclusion of time in favour of the party who is to file the Court-fees will depend upon the circumstances, but other parties to whom no responsibility attaches for the delay will be entitled to exclude the time."

Then we have the Nagpur High Court which also considered this question in a full bench in *Umda* v. *Rupchand*.[2] With very great respect to the learned Judges, it is rather difficult to understand the principle they are laying down in that judgment. It is pointed out that "it is clear that the limitation for an appeal runs from the date of the decree, which is the

[1] (1935) 15 Pat. 284, F. B.

[2] [1927] A. I. R. Nag. 1, F. B.

date of the judgment." There is no dispute with regard to that proposition. Then the judgment goes on (p. 2):

"If delay in signing the decree actually prevents the applicant from obtaining a copy of it, he has only to apply for the copy of the decree before it is signed and an allowance will automatically be made under s. 12 of the Limitation Act for the period during which the decree remained unsigned."

The test they lay down is that the decree should actually prevent an applicant from obtaining a copy of it. It is difficult to understand how delay in signing a decree can ever prevent a party from applying for a copy of it. If this is intended in the sense that an application for a copy of the decree which is non-existent is an entirely futile proceeding, then, with respect, one understands this observation, but otherwise there is nothing to prevent a party from putting an application on file for a copy of a decree although the decree may not have yet come into existence. Then they go on to say:

"We think it clear that where an application for a copy is made after the decree is signed no allowance whatever can be made for any part of the period during which it remained unsigned."

With respect, we are unable to agree with this view. Here, again, emphasis seems to have been placed on the application for a copy of the decree and not on the fact that the very document of which a copy was sought was not prepared or not in existence. And the distinction drawn between the application before the signing of the decree and after the signing of the decree does not, with respect, seem to be based on any principle.

Then, we come to the decision of the Allahabad High Court in *Keshar Sugar Works* v. *R. C. Sharma*,[1] which has taken the opposite view to the one which we are suggesting is the correct view on the interpretation of s. 12 (2) of the Limitation Act. With respect, we would immediately concede that logically the view taken by the Allahabad High Court is a possible view, and the view taken by that full bench is that the preparation or the non-preparation of a decree has nothing whatever to do with the time requisite for obtaining a copy of the decree. According to the Allahabad High Court, some definite step should be taken by the appellant towards the obtainment of the copy, and unless such definite step is taken, it could not be said that any time was required for obtaining the copy. Therefore, if the decree is not signed and the

[1] [1951] A. I. R. All. 122, F. B.

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appellant has not applied for a copy, the time that is taken up for the preparation of the decree cannot be considered to be the time requisite for obtaining the copy, because the appellant himself has taken no definite step. He has done nothing for the purpose of obtaining the decree. If this be the correct view, then it must follow that the appellant should apply for a copy as soon as the judgment is delivered and it should also logically follow that if the appellant waits till the period of limitation has run out and then applies for a copy, then time should not be excluded under s. 12 (2) of the Limitation Act. It might be stated that this was the view once held by this Court as is to be found in *New Piece Goods Bazaar Co.* v. *Jivabhai.*[1] In that case Sir Basil Scott, Chief Justice, and Mr. Justice Chandavarkar took that view, and Sir Basil Scott, Chief Justice, pointed out that that principle would cause no hardship to the appellant because all he had to do was to show by his application that he intended to appeal and to make his application within the time limited for the purpose. This view has been expressly overruled by the full bench to which reference has been made in *Murlidhar* v. *Motilal.*[2] Therefore, there is a clear indication that as far as this Court is concerned, ever since the full bench decision in *Murlidhar* v. *Motilal,*[2] we took a different view of s. 12 (2) from the view adopted by the Allahabad full bench in *Keshar Sugar Works* v. *R. C. Sharma,*[3] and the view that we are now taking in this full bench is the logical and consistent extension of the view adopted in the earlier full bench in 39 Bom. L. R. 32.

There is one more case to which reference might be made, because it is rather an instructive case, and that is a decision of the Privy Council in *Pramatha Nath Roy* v. *Lee.*[4] Their Lordships were there considering an appeal from the Calcutta High Court on the Original Side, and the question was whether that particular appeal was in time, and Lord Buckmaster delivering the judgment of the Board considered the various steps taken by the appellant in getting the decree signed, and it is rather significant that their Lordships did not consider the question of the application for a copy of the order at all. That was not the test that they applied. What they considered was whether the time taken up between the making of the order and the signing of it was properly taken up or whether part of it was due to the default of the applicant.

(1) (1913) 15 Bom. L. R. 681.
(2) (1936) 39 Bom. L. R. 32, F. B.
(3) [1951] A. I. R. All. 122, F. B.
(4) (1922) L. R. 49 I. A. 307.

That case clearly shows that their Lordships did not consider the application for a certified copy as the conclusive test. That case rather assumes that the period between the making of the order and the signing of it should be ordinarily excluded, and that is why their Lordships were at pains to consider whether the whole of that period was properly required or whether part of it was taken up by reason of default on the part of the applicant.

It has been suggested at the bar that the principle we are laying down may lead to dilatoriness on the part of the appellants and it may also lead to a considerable delay in preparing the decree. We fail to understand what connection there should be between an application for a certified copy of a decree and the preparation and signing of the decree. The Court has to prepare and get the decree signed irrespective of any application made for a certified copy. It is for the Courts to see that they are diligent in getting the decree prepared and signed, an act which is made incumbent upon them under the Code. It is for the Courts to see that the period of limitation is not unnecessarily extended by the delay caused by the Court itself in preparing the decree.

Turning to this particular case before us, Mr. Justice Dixit has found as a fact that the appellants were not in default in the delay that took place in the signing of the decree. But the learned Judge thinks the period of 59 days that elapsed between May 1, 1948, when the judgment was pronounced and June 29, 1948, was unduly long and from that he infers that it was an unreasonable period and therefore the whole of that period should not be excluded under s. 12 (2). With very great respect to the learned Judge, it is difficult to understand how, once it is found that the appellants were not responsible for the delay, any portion of the period of 59 days should not be computed for the purpose of s. 12 (2). However long the delay might be, however unreasonable it may be, if the appellants were not responsible for the delay and if the Court was responsible for the delay, we fail to see why the appellants should be penalised for the period that expired between the pronouncement of the judgment and the signing of the decree. The delay may be unreasonable, but if default is to be found at all, it is to be found with the Court and not with the appellants whom the learned Judge himself has acquitted of any negligence which led to the failure to prepare the decree in sufficiently short time. Therefore, on the facts of this case we hold

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that the period between May 1, 1948, and June 29, 1948, was a period requisite for the purpose of applying for a certified copy of the decree within the meaning of s. 12 (2), and the whole of this period must be excluded in computing the period of limitation.

Under these circumstances we must hold that the appeal preferred to the District Judge was in time, that the decree of the appellate Court will be set aside, and the appeal remanded to him for disposal according to law. I think the fair order to make with regard to costs is that the appellants should get their costs of the Letters Patent appeal, but costs of the second appeal before Mr. Justice Dixit and the costs of the appeal before the District Judge should be costs in the appeal which we are now remanding to the learned District Judge. We direct that the learned District Judge should dispose of the appeal expeditiously, and that the papers be sent to the District Court immediately.

Case remanded.

M. W. P.

APPELLATE CIVIL

Before Mr. M. C. Chagla, Chief Justice, and Mr. Justice Gajendragadkar.

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August 1

MANEKCHAND BHARMAPPA LENGADE AND ANOTHER (ORIGINAL PLAINTIFFS), APPELLANTS *v.* RACHAPPA VIRSANGAPPA CHINAWAL AND OTHERS (HEIRS OF ORIGINAL DEFENDANTS), RESPONDENTS.*

Indian Limitation Act (IX of 1908), s. 20—Mortgage—Mortgaged property in possession of mortgagee by reason of mortgage deed—Mortgagee receiving rent—Whether limitation is saved in respect of whole debt by receipt of rent.

The expression "where mortgaged land is in the possession of the mortgagee" in s. 20 (2) of the Indian Limitation Act, 1908, does not merely apply to cases where the mortgagee is in possession under a usufructuary mortgage; it applies to all cases where the mortgagee is in possession in his capacity as the mortgagee and under the terms of the mortgage. Therefore, if the mortgagee is in possession by reason of the mortgage deed and if in that capacity he receives any rent or produce from the mortgaged property, then the receipt of the rent is deemed to be a payment for the purpose of s. 20 (1) of the Act, and limitation is saved in respect of the whole debt secured by the mortgage.

FIRST APPEAL from the decision M. S. Bagali, Esquire, Civil Judge (Senior Division), at Belgaum.

* First Appeal No. 134 of 1948.