PRIVY COUNCIL

PramathaNath Roy

Vs.

William Arthur Lee
P.C.A. No. 131 of 1920

(Lords Buckmaster, Atkinson, Sumner and Parmoor.JJ.)

12.5.1922

JUDGMENT

Lord Buckmaster J.

1. The Appellant in this case is the defendant in a suit which the respondent instituted by a plaint filed on the 24th June, 1916. The various stages in the litigation are set out in detail in the judgment of the Chief Justice in the Appeal Court at Calcutta, and it is unnecessary that they should be repeated. Among these there was a decree made on the 14th February, 1918, decreeing in favor of the respondent and against the appellant the sum of Rs. 27,443. Application made by the appellant to Mr. Justice Greaves to set that decree aside was refused on the 26th July, 1918. The appellant desired to appeal from that refusal, and he produced his memorandum of appeal before the Court on the 30th August of that year, on the eve of the Court rising for the vacation.

2. By Rule 3 of Chapter 32 of the rules of the High Court of 1914, it is provided that every memorandum of appeal shall be accompanied by a copy of the decree or order appealed from, and with this rule the appellant did not comply. The memorandum of appeal was, however, admitted without the order, subject to all objections that might be raised on the hearing which took place on the 29th of January, 1919. It was then decided by the High Court that the appeal was out of time, and it is from that judgment that the present appeal has been brought. That the notice of appeal was out of time, in fact, is beyond dispute, for the period of appeal is twenty days from the date of the decree or order which it is sought to impeach, and that period expired on the 15th August. 1918. But there is a provision contained in Section 12, Sub-section 2, of the Limitation Act of 1908, which provides that in computing the time for appeal there shall be excluded the time requisite for obtaining a copy of the decree. The appellant's contention is that the time "requisite" within the meaning of that sub-

section is the time which, in the circumstances of the case, is actually occupied in obtaining the decree, and that, so regarded, the time that ought to be deducted here is more than sufficient to rectify the delay.

3. The facts with regard to that matter are these :- After the order had been made on the 26th July no steps were immediately taken by the plaintiff to have the order drawn up, but after the lapse of four days it was competent to the defendant to apply for that purpose. The four days elapsed and nothing was done. On the 6th August application was made by the plaintiff to have the order drawn up, and on the 7th August the draft of the order was sent to the appellant. The order was simplicity itself, but the appellant only returned the draft on the 16th August. On the 28th August it was signed, and on the 3rd September it was filed by the plaintiff.

4. Now the learned Judges in the Appeal Court have held that in determining what is the requisite time referred to in Section 12 of the Limitation Act the conduct of the appellant must be considered, and their Lordships think that in so determining they have rightly regarded the statutory provision. In their Lordships' opinion no period can be regarded as requisite under the Act, which need not have elapsed if the appellant had taken reasonable and proper steps to obtain the order. In the present case he took none, and the periods between the 30th July and the 6th August and again between the 7th August and the 16th August, which were within the appellants' control are sufficiently great to prevent the appellant from saying that the time that did elapse must have elapsed even if he had acted with reasonable promptitude. It is then urged that there is an authority, decided in 1886, which has been the origin of a practice undeviatingly followed by the Courts in Calcutta in the interpretation of the statute, and that practice is said to be that in determining what is the time requisite which may be deducted you are, in all cases, to look at the time that has actually elapsed in obtaining the order. Their Lordships are unable to see how this decision *BaniMadhubMitter v. MatunginiDassi*[1] can have been so misunderstood. In that case judgment was pronounced on the 17th July, 1883, and the decree was signed on the 23rd July, so that only six days elapsed between the pronouncing of the judgment and the signing of the decree. It would be impossible for anybody to suggest that that was an unreasonable time. Again the application for the copy was made on the 3rd August, and it was obtained on the 11th August; another eight days elapsed there for which the appellant need not be held responsible. All that that case decided was that those two periods of time, one of which was prompt and effective and the other of which the appellant might not have been able to control, ought to be deducted from the length of

time between the decree and the lodging of the memorandum. It certainly does not sup port the proposition that in determining what period is to be deducted in any case the time actually consumed in obtaining the decree is to be regarded.

5. Their Lordships have been referred to a well-known book on practice which, it is said, shows that that is the practice, notwithstanding the limited character of the judgment; but even there it is impossible to find this practice laid down in terms so plain and so unhesitating that their Lordships could rely upon that authority for the purpose of saying that it has become established as the equivalent of a Rule of Court.

6. Their Lordships think that the appellant here is wrong for the reason stated, which they regard as forming the foundation of the judgment appealed from.

7. For these reasons their Lordships will humbly advise His Majesty that this appeal should be dismissed with costs.

Appeal dismissed.

Cases Referred.

1.(1886) 13 Cal 104 (FB)