CALCUTTA HIGH COURT

Sipra Dey

Vs.

Ajit Kumar Dey

A.F.O.D. No. 250 of 1981

(A.M. Bhattacharjee and Ajit Kumar Nayak, JJ.)

02.09.1987

JUDGEMENT

A.M. Bhattacharjee, J.

1. This matrimonial appeal by the wife-appellant was preferred beyond the period of limitation but the delay has been condoned under Section 5 of the Limitation Act on an application filed subsequent to the presentation of the appeal. Mr. D. Roze, the learned counsel appearing for the husband-respondent has now urged, and has urged very seriously, that the order condoning the delay under Section 5 of the Limitation Act was patently erroneous for two reasons. Mr. D. Roze has contended that, firstly, Section 5 of the Limitation Act cannot have any manner of application to a matrimonial proceeding under the Hindu Marriage Act including an Appeal, and, secondly, even if the Section applies, the application thereunder ought to have accompanied the memorandum of appeal as now required by Rule 3A of the Civil Procedure Code, inserted by the Amendment Act of 1976, and such an application having filed later, the delay could not be condoned.

2. An appeal against a decree under the Hindu Marriage Act is provided in Section 28(1)of the said Act and the period of limitation therefor is prescribed in Section 28(4). It is neither an appeal under the general law, i.e., the Civil Procedure Code, nor the period of limitation therefor is prescribed under the general law, i.e., the Limitation Act, for if it were so, these provisions in Section 28 would not have been necessary. The Division Bench decisions of this court in *Sobhana v. Amar*[1], and in *Pratima v. Kamal*[2], are clear authorities for the view that an appeal against a decree under the Hindu Marriage Act is an appeal under Section 28 of that Act and not an appeal under the general law. The Division Bench decision of the Bombay High Court in *Madhukar v. Malti*[3] is also to that effect. All these decisions were rendered under Section 28 of the Hindu Marriage Act as it stood before 1976, but the present Section 28, as amended by the Amendment Act of 1976, makes the position clearer and Section 21B of the Act, also inserted by the said Amendment Act, puts the matter beyond all controversy by describing, in Sub-section (3), an appeal against a decree or order passed under the Hindu Marriage Act as an "appeal under this Act", i.e. the Hindu Marriage Act.

[1] AIR 1959 Cal 455 [3] AIR 1973 Bom141

[2](1964) 68 Cal WN 316

3. Section 29(2) of the Limitation Act makes the provisions of Sections 3 to 25 thereof applicable to all suits, appeals and applications under any 'special law' and there should be no doubt that the Hindu Marriage Act. or for the matter of that, its Section 28(4), is a 'special law' within the meaning of Section 29(2) of the Limitation Act. Even if Section 41 of the Penal Code, defining 'special law' as "a law applicable to a particular subject" is not directly available for the construction of the same expression in Section 29(2), Limitation Act, the expression, as pointed out by the Supreme Court in *Kaushalya Rani v. Gopal Singh*[4], would very much mean a law enacted for special or particular subject in contradistinction to general rules of the law laid down as applicable generally to all cases with which the general law deals. Under Section 29(2) of the Limitation Act, therefore, the provisions of Sections 3 to 25, including obviously Section 5, would have been applicable to an appeal under Section 28 of the Hindu Marriage Act.

4. But Section 29(3) of the Limitation Act, however, provides that "save as otherwise provided in any law for the time being in force with respect to marriage and divorce, nothing in this Act shall apply to any suit or other proceeding under any such law". It has been urged by Mr. D. Roze that even though the expression 'suit' in Section 29(3) may not include 'appeal' because of Section 2(1), the expression 'proceeding' would, lexically, logically and also legally include an 'appeal'. We would agree with Mr. D. Roze that, by itself, the expression 'proceeding' is wide enough to include appeal and in fact in a sense 'proceeding' is the genus of which suit, appeal and application are different species. But in a given context and in conjunction with other words, the expression 'proceeding' like any other expression, may very often have a different and limited meaning. A word, like a man, is very often known by the company it keeps and accordingly, a word is very often to be understood in the context and collocation it is used. This rule of interpretation is known as noscitur a sociis which is much wider than the rule of ejusdem generis, and in fact the latter rule is only an illustration or application of the former. The rule is, as Maxwell puts it (Maxwell on Interpretation of Statutes - 10th Edition, P. 332), that "when two or more words which are susceptible of analogous meaning are coupled together noscitur a sociis, they are understood to be used in their cognate sense" and "they take, as it were, their colour from each other, that is, the more general is restricted to a sense analogous to the less general". As observed by Gajendragadkar. J., (as his Lordship then was), in the Supreme Court decision in *State of Bombay v. Hospital Mazdoor Sabha*[5], "associated words take their meaning from one another under the doctrine of noscitur a sociis, the philosophy of which is that the meaning of a doubtful word may be ascertained by reference to the meaning of words associated with it; such doctrine is broader than the maxim ejusdem generis" and that "in fact the latter maxim is only an illustration or specific application of the broader maxim noscitur a sociis'. As has been painted out further, "it must be borne in mind that noscitur a sociis is merely a rule of construction and it cannot prevail in cases where it is clear that the wider wards have been deliberately used in order to make the scope of the defined word correspondingly wider. It is only where the intention of the Legislature, in associating wider words with words of narrower significance is doubtful, or otherwise not clear, that the present rule of construction can be usefully applied. It can also be applied where the meaning of the words of wider import is doubtful...."

[4] AIR 1964 SC 260 at p. 263
[5] AIR 1960 SC 610 at pp. 613, 614

5. We are satisfied that even though lexically, logically and in common as well as legal

parlance, the expression 'proceeding' includes an appeal, an application and even a suit, there are good and weighty reasons to apply the rule of noscitur a sociis to the word proceeding in the expression suit or other proceeding in Section 29(3) of the Limitation Act and to construe the same to mean proceeding in the nature of suit, that is, original proceeding and not to include appeal. The reasons are as hereunder.

6. The Limitation Acts have never been applied to original criminal prosecutions as a matter of public policy as the State and the, Society are interested in such prosecutions which should not be forestalled by mere efflux of time. The State and the Society are also similarly interested in the healthy, orderly and stable growth of the families and for the same reason, Limitation Acts have never provided any period of limitation for filing suits or original Petitions for matrimonial reliefs. But as the State and the Society are also vitally interested in the finality of all litigations, including criminal or matrimonial litigations - interest republicae ut sit finis litium - the preceding Limitation Act of 1908 clearly provided for periods of limitation for criminal appeals in various Articles and Section 29(3)of that Act of 1908 excluded from its operation only the suits under the Indian Divorce Act (that being then the only Statute providing for matrimonial reliefs), but not the appeals. That appeals from the decrees under the Divorce Act were governed by the Limitation Acts was decided by a Division Bench of the Bombay High Court as early as in 1898 in *A v. B*[6] That being the scheme and purpose of the earlier Limitation Acts, we would not like to construe the expression proceeding in Section 29(3) of the present Limitation Act to include appeal also to as to include all matrimonial appeals from the purview of the provisions of the Limitation Act.

7. A survey of the provisions of the present Limitation Act would also demonstrate that whenever provisions have been made for appeals, the Legislature has expressly used the expression appeal as in Sections 3, 4, 5, 12, 13, 29, 30 and 31 of the Act and that being the general frame of the Act, we are inclined to think that if the Legislature intended to make the provisions of Section 29(3) applicable to appeals it would have clearly said so in express words. The very preceding Sub-section (2) of Section 29 has also used the expression suit, appeal and application instead of the expression proceeding as that Sub- Section was clearly intended to apply to appeal also. Our attention could not be drawn to any Section or Article of the Limitation Act applying to appeals which has, without expressly using expression appeal, has used the wider expression proceeding.

8. Some of the provisions of the Limitation Act relating to appeals enact principles which are eminently 'reasonable' and evidently 'right', 'just and fair.' For example, it is obviously reasonable to provide, as provided in Section 12, that the time requisite for obtaining copies of the judgment and decree shall be excluded in computing the period of Limitation for the appeal. The provision of Section 5 empowering the Court to admit appeal even after the prescribed period for good and sufficient cause is also another such provision. To construe the word proceeding in Section 29(3) to include appeal would be to overthrow all these reasonable provisions in respect of appeal, while to construe the same as to exclude appeal and to mean only original proceeding in the nature of a suit would be to make all these reasonable provisions available to appeals. The latter

[6](ILR 22 Bom 612)

construction can easily be arrived at by applying the principle Noscitur A Sociis and since where two constructions are possible, that which would be more conducive to reason and justice is to be preferred, we would adopt that construction.

9. Mr. D. Roze has, however, drawn our attention to the provisions of the Long Title of the Act where the Act has been described as "An Act to consolidate and amend the law for the limitation of suits and other proceedings and for purposes connected therewith" and Mr. D. Rose has urged that since the Act has provided for the limitation of suits as well as appeals and applications, the expression other proceedings in the long Title obviously includes appeals and applications and that being so, the same meaning would have to be given to the same expression in Section 29(3).

10. We have given our anxious consideration to this argument. Even though the preceding Act of 1908 was passed for similar objects as the present Act, the Long Title of the preceding Act did not use the expression suits and other proceedings, but the Long Title was "an Act to consolidate and amend the law for the limitation of suits and other purposes" and the preamble thereof clearly spelt out that the Act was enacted "to consolidate and amend the law relating to limitation of suits, appeals and certain applications to Courts." But modern Starutes as pointed out in Craies on Statute Law (7th Edition, p. 200), for the most part do not have preambles and it seems that the draftsman of the present Limitation Act of 1963, while following the modern fashion, discarded the Preamble, he also thought that he would be making better draft by discarding the expression suits and other purposes in the earlier Long Title and also the expression suits, appeals and certain applications in the earlier Preamble and by substituting therefore the expression of his own coinage suits and other proceedings. But he has, in fact, demonstrated thereby the truth of the observation of Bhagwati, J., (as his Lordship then was) in Minerva Mills, AIR 1980 Supreme Court 1789 at p. 1823 to the effect that "slovenliness in drafting is becoming rather common these days."

11. Be that as it may, Titles of Statute, whether Long or Short, are only names and though in matters relating to interpretation of Statutes, we cannot adopt the attitude of the Shakespearean Hero proclaiming "what is in a name", we cannot also stretch or strain, widen or narrow the word in the body of the Statute by discarding its sensible, reasonable and contextual meaning, merely because something in the Name might indicate a wider or narrower connotation. It is true that gone are the days when it could be contended that Title was no part of the Statute and was to be excluded from consideration in construing the Statute and that it is now well-settled that a Title may legitimately be taken into such consideration. But as pointed out by S.R. Das, J., (as his Lordship then was) in the decision of the Supreme Court in *Aswini Kumar Ghose v. Arabinda Bose*[7], the Title "may be referred to for the purpose of ascertaining its general scope and throwing light on its construction, although it cannot override the clear meaning of the enactment." That being so, if, for the reasons stated hereinbefore, there are, in the context of all the relevant provisions of the Limitation Act, good and weighty reasons to construe the expression other proceedings in Section 29(3) of the Limitation Act to mean only original proceeding in the nature of suits and not to include appeals, those cannot be overridden by anything in the Long Title where the general purposes and objects of the Act have only been sought to be put in some abbreviated form. As pointed out in Crawford's Statutory

[7] AIR 1952 SC 369 at p. 388

Construction (1940 - Section 206, p. 359), the Title can never be conclusive of the intent of the Legislature as manifested in the body of the legislation.

12. There is yet another good reason not to construe the expression other proceeding in Section 29(3) of the Limitation Act of 1963 as to include appeals. Until the enactment of this Act of

1963, matrimonial appeals under Section 28 of the Hindu Marriage Act, 1955, as it stood then, were being governed by the provisions of the preceding Limitation Act of 1908 both in respect, of the period of limitation as well as in respect of enlargement of that period by extension or exclusion under the provisions of Sections 5, 12 and other Sections. And though periods of limitation for matrimonial appeals under Section 47 of the Parsi Marriage and Divorce Act, 1936 and under Section 39 of the Special Marriage Act, 1954 were specially provided in those Sections, in respect of computation of such period, the provisions of the Limitation Act providing for extension or exclusion as in Sections 5, 12 etc. used to apply. The reason for application of the provisions of the Limitation Act, 1908 to the matrimonial appeals under the aforesaid three Acts was that Section 29(3) of that Act made the Act inapplicable only "to suits under the Divorce Act." But if we now construe the expression other proceeding in Section 29(3) of the present Limitation Act of 1963 to include appeals also, and thus make the Limitation Act of 1963 inapplicable to all matrimonial appeals, that would deprive the appellants in all such appeals from the benefit of all the beneficial and reasonable provisions of the Act providing for extension and exclusion of periods. Nay, yet more startling results. There is no provision providing for any special period of limitation for a matrimonial appeal under the Indian Divorce Act and the period is computed according to the general law as provided in the Limitation Act. That was also the position in respect of matrimonial appeals under the Hindu Marriage Act until a special period of limitation was provided in Section 28(4) as amended in 1976. Therefore, to hold that the expression other proceeding in Section 29(3) of the present Limitation Act includes appeals and the whole of the Act is thus inapplicable to matrimonial appeals, is to hold that there is no period in limitation for appeals under the Indian Divorce Act and that there was also no period of limitation for appeals under the Hindu Marriage Act from 1955 till 1976. Now it is well-settled that if the language of the legislation can reasonably admit of two constructions, and, if construed in one such way, would lead to palpable absurdity or obvious injustice, the Court must act upon the view that such a result could not have been intended, unless a contrary intention has been manifestly enunciated in express words (Maxwell - 10th Edition, p. 201).

13. Far from there being any express enunciation in Section 29(3) indicating its application to appeals also, there is clear indication in the Statements of Objects and Reasons accompanying the Bill to the effect that the present Sub- Sec. (3) of Section 29 of the Act of 1963 only "amplifies Section 29(3) of the existing (i.e. the earlier) Act so as to exclude the application of this law to suits under any law, dealing with marriage or divorce" and not to exclude its application to appeals under any such law. We do not, as we cannot, for a moment suggest that such statements would determine or clinch the issue. But where, as here, a clear statement has been made as to the object of a clause in a Bill, and that clause has been finally enacted, the object so held out can surely be taken due note of while ascertaining the meaning of that clause. We have now travelled a very long distance from the days of 'no-entry' to the present day of 'free-entry' of Hansard in the forensic arena. We, therefore, conclude, and that we do without hesitation, that the words "other proceeding" in the expression "any suit or proceeding" in Section 29(3) of the Limitation Act, 1963 mean original proceeding in the nature of suits and do not include appeals.

14. There are a number of authorities in support of the view we are taking, but we have so long been considering the question on principles as, in our view, and this we say with due respect, none of the aforesaid authorities has considered the question in such depth or details as we have had to do here in this case, and, in particular, the question does not appear to have been

considered in any of those decisions with proper advertence to the Long Title and in the context of the various other provisions of the Limitation Act. To start with, the Full Bench decision of this Court in *Debi Bhaduri v. Kumarjib Bhaduri*[8], cannot be taken to have decided the question because the question which concerned and was decided by the Full Bench was whether the shorter period of limitation prescribed by Section 28 of the Hindu Marriage Act, as amended by the Amendment Act, 1976, would apply to any appeal arising out of a proceeding pending on the date of the commencement of the aforesaid amendment Act. The Full Bench answered the question in the affirmative and as a result the appeal in that case was to be taken to have been filed beyond the period of Limitation. It was in that context that the Full Bench, while returning the case back to the Division Bench which made the reference, observed (at paragraphs 17 and 22) that the appeal being thus barred by limitation, an application for extension under Section 5 of the Limitation Act was to be dealt with and disposed of by the Division Bench and that the decision of the Full Bench on the question of limitation "would not affect or prejudice the rights, if any, of the appellant to make an application under Section 5 of the Limitation Act". This is, therefore, obviously no decision or declaration of law on the question as to whether the provisions of Section 5 of the Limitation Act would apply to matrimonial appeals under Section 28 of the Hindu Marriage Act in view of Section 29(3) of the Limitation Act.

15. But the subsequent decision of the Division Bench in the same case in *Debi Bhaduri v. Kumarjib Bhaduri*[9], appears to be a direct decision on the question holding that the provisions of Section 5 of the Limitation Act would apply to a matrimonial appeal under Section 28 of the Hindu Marriage Act notwithstanding Section 29(3) of the Limitation Act, where the expression other proceeding would refer to original proceeding only and would not include appeal. Mr. D. Roze has very strenuously urged that this Division Bench decision was wrongly decided without any advertence to the expression other proceeding in the Long Title of the Act and the other relevant provisions thereof and advised us very seriously to have the question referred to a larger Bench. For the reasons given by us hereinbefore in considerable details, we find no reason to differ from, and we fully agree with, the Division Bench even though, as already indicated, the Division Bench has not considered all the various aspects to which we have adverted here.

16. The Division Bench in Debi Bhaduri (supra) has also referred with approval to a Division Bench decision of the Delhi High Court in *Chander Dev v. Rani Bala*[10], which has also held (at 24) that "the prohibition contained in Section 29(3), Limitation Act, 1963 is restricted only to suits and proceedings and hence does not

[8] AIR 1980 Cal 1 [10] AIR 1979 Delhi 22

[9](1980) 1 Cal LJ 309

extend to appeals". The Delhi decision also has not, and this again we say with respect, considered the various aspects which have been considered by us here, but we nevertheless agree with that decision.

17. A Division Bench decision of the Madhya Pradesh High Court in *Kantibai v. Kamal Singh*[11], has also been referred to by the Division Bench of this Court in Debi Bhaduri, (1980(1) Cal LJ 309) (supra) but it has been rightly pointed out that all that has been decided in Kantibai (supra) is that the provisions of Section 5 of the Limitation Act would be available in a matrimonial appeal under Section 28 of the Hindu Marriage Act in view of Section 29(2) of the Limitation Act. The question whether the provisions of the Limitation Act have been rendered inapplicable to matrimonial appeals in view of Section 29(3) of the Limitation Act has not considered even

remotely and, therefore, this decision cannot be regarded as an authority on the question before us. If the provisions of the Limitation Act are not excluded by Section 29(3) in respect of matrimonial appeals, there can obviously be no doubt that Section 5 would apply thereto in view of Section 29(2). Be that as it may, on a review of these authorities we would, therefore, hold both on principle and on authority that the wordsother proceeding in the expression suit or other proceedingin Section 29(3) of the Limitation Act, 1963 would mean original proceeding in the nature of suits and would not include appeals and that the provisions of the Limitation Act, unless expressly excluded, would apply to matrimonial appeals.

18. One word more before we part with this question. The period of limitation for a matrimonial appeal under Section 28 of the Hindu Marriage Act is now fixed by Sub-section (4) of that Section at 30 days. If the provision of Limitation Act would not apply to a matrimonial appeal under Section 28 of the Hindu Marriage Act, then the provision of Section 3 of the Limitation Act mandating dismissal of an appeal preferred beyond the period of limitation would not also apply and the court being thus under no mandatory obligation to dismiss a time barred appeal, can extend the period and condone the delay for good and sufficient cause in exercise of its inherent power to do justice, for which alone it exists and Section 3 being thus out of the way, no question of exercising any inherent power in violation of or derogation from Statute would arise. This aspect has also been adverted to in the Delhi Division Bench decision in Chander Dev, (AIR 1979 Delhi 22) (supra at p. 23, para 4). But since we hold that the provisions of the Limitation Act would apply to matrimonial appeal under Section 28, Hindu Marriage Act, notwithstanding Section 29(3) of the Limitation Act, we need not pursue the point any further. The preliminary objection raised by Mr. D. Roze to the effect that this appeal is time barred and the delay in filing the appeal could not be condoned as Section 5 of the Limitation Act could not apply to this matrimonial appeal in view of Section 29(3) of the Limitation Act, is, therefore, overruled.

19. The second objection raised by Mr. D. Roze is that, even if Section 5 of the Limitation Act would apply, an application for condonation of delay ought to have accompanied the memorandum of appeal as required by Rule 3A of Order 41 of the Civil Procedure Code, as inserted by the Amendment Act of 1976 and the delay could not be condoned on an application filed subsequent to the presentation of the appeal. It is true that Rule 3A(1), as now inserted in 1976, provides that "when an appeal is preferred after the expiry of the period of limitation prescribed therefor, it shall be accompanied by an

[11] AIR 1978 Mad Prad 245

application supported by an affidavit setting forth the facts on which the appellant relies to satisfy the court that he had sufficient cause for not preferring the appeal within such period". We have given the matter our anxious consideration and we are satisfied that the provision of Rule 3A(1) mandating an application for condonation of delay to accompany the memorandum of appeal is not that mandatory to warrant outright rejection of the memorandum unaccompanied by such application and to prevent the court to condone the delay on an application presented thereafter.

20. As early as in 1917, *Krishnasami v. Ramasami*[12], the Privy Council, while laying down that an *ex parte* admission of a time-barred appeal would always be liable to reconsideration at a later stage at the instance of the respondent aggrieved by such admission without notice, desired "to impress on the courts in India the urgent expediency of adopting, in place of this practice, a procedure which would secure at the stage of admission the final determination (after due notice to all parties) of any question of limitation affecting the competency of the appeal" and the Privy

Council again reiterated this view a year later in *Sundara Bai v. Collector of Belgaum*[13], It seems that we have taken about seven decades (and better late than never) to pay heed to this very important piece of recommendation and as would appear from the relevant Notes on Clauses in the Bill for the Amendment Act of 1976, this Rule 3A was being inserted to give effect to that recommendation. While the general power to condone the delay is still to be found in Section 5 of the Limitation Act, a procedure for the exercise of that power has now been provided in this Rule 3A.

21. Rule 3A, therefore, is a rule of procedure and about the proper approach to be made to such law of procedure, a three-Judge Bench of the Supreme Court in *Sangram Singh v. Election Tribunal*[14], speaking through Vivian Bose, J., observed thus :-

> "A Code of procedure must be regarded as such. It is 'procedure' something designed to facilitate justice and further its ends; not a penal enactment for punishment and penalties; not a thing designed to trip people up. Too technical construction of Sections which leaves no room for desirable elasticity of interpretation should, therefore, be guarded against (provided always that justice is done to 'both' sides) lest the very means designed for the furtherance of justice be used to frustrate it."

In *Jai Jai Ram Manoharlal v. National Building Material Supply*[15], a two-Judge Bench of the Supreme Court speaking through Shah, J., again observed as hereunder :-

> "Rules of procedure are intended to be a handmaid to the administration of justice. A party cannot be refused just relief merely because of some mistake, negligence, inadvertence or even infraction of the rules of procedure"

22. The observations in Sangram Singh (supra) have been quoted with approval in a rather recent decision of the Supreme Court in *Kalipada v. Bimal Krishna*[16], We are inclined to think that these observations of the

[12] AIR 1917 PC 179 at p. 181
[13] AIR 1918 PC 135 at p. 136
[14] AIR 1955 SC 425 at p. 429
[15] AIR 1969 SC 1267 at p. 1269
[16] AIR 1983 SC 877 at p. 877

Supreme Court in Sangram Singh (supra) and in Jai Jai Ram Manoharlal (supra) should be clear authorities for the view that the infraction of the Rule 3A of Order 41 by not filing an application for condonation simultaneously along with the memo of appeal shall not operate to trip up an appellant and to deny just relief to him But even that apart, for the reason as stated hereinbelow, we are satisfied that the provisions of Rule 3A is not that mandatory to warrant rejection of the memo of a time-barred appeal for being unaccompanied by an application for condonation and to prevent the court to condone the delay on an application filed later.

23. As already noted, Rule 3A has been inserted to implement the recommendation of the Privy Council in Krishnasami, (supra) and in Sundara Bai (supra) to provide for a procedure, so that the question of condonation of delay of a time-barred appeal is decided once for all at the initial stage and that an appeal may not drag on for considerable time only to be dismissed at the end on the ground of limitation. That being he object behind the Rule, the object would not stand defeated if such a question is decided on an application filed, not simultaneously but, some time

after the presentation of the appeal, before the question has been decided by the court.

24. Rule 1, O.41 also requires that the memo of appeal "shall be accompanied-by a, copy of the decree" and Rule 3 expressly authorises the court to reject the memo if Rule 1 is not complied with. But the very succeeding Rule 3A does not in any way provide that its non-compliance will also entail such rejection and we do not think that we should take such a course to be implied when the Legislature took all the care to provide for such a course in express terms in the preceding Rule 3.

25. Section 5 of the Limitation Act providing for condonation of delay applies not only to appeals but to applications also. But there being nothing analogous to Rule 3A in the Civil Procedure Code or any other law requiring that an application for condonation of delay to file an application must also accompany the main application, such a condonation application can very well be filed at a later stage. And in that case, if we construe Rule 3A to be so mandatory as to entail rejection of a time-barred memo of appeal unaccompanied by a condonation-application, we would have to arrive at a patently incongruous position that while a condonation-application in respect of a time-barred application need not accompany the latter, a time-barred memo of appeal must be so accompanied. We would accordingly hold that even though an application for condonation of delay has not been presented along with the memo of a time-barred appeal in accordance with the Rule 3A of Order 41, the court would still have full jurisdiction to condone the delay under, Section 5 of the Limitation Act on an application filed later. But we would only add that if in the absence of any such accompanying condonation-application the court dismisses the appeal, the court would be perfectly acting within its jurisdiction in view of Rule 3A of Order 41 read with Section 3 of the Limitation Act. A Division Bench decision of the Karnataka High Court in *State of Karnataka v. Nagappa*[17], and a single-Judge decision of the Orissa High Court in *Dijabor v. Sulabha*[18], have also taken the same view about Rule 3A of Order 41 of the Civil Procedure Code and we express our respectful concurrence with them.

[17] AIR 1986 Karn 199
[18] AIR 1986 Orissa 38

26. As already indicated, this appeal, however, was admitted on condonation of delay by an order dt. 8-6-1981 in Civil Rule No. 1290(f) of 1980 and the said Rule was made absolute after hearing the respondent husband. If such an admission was made *ex parte* without notice to the respondents, then, as was pointed out by the Privy Council in Krishnasami, (AIR 1917 PC 179) (supra, at p. 180), however unqualified such admission might have been, it would have been open to reconsideration at a later stage at the instance of the respondent who has been prejudicially affected thereby. This view in Krishnasami (supra) has been approved by the Supreme Court in *Dinabandhu v. Jadumoni*[19], But where, as here, such admission has been made on condonation of delay with express notice to and after hearing the respondent, we would have no jurisdiction to reconsider the same at a later stage and the objection by Mr. D. Roze as to the appeal being time-barred could have been repelled on this ground alone. But in view of the importance of the questions raised by Mr. D. Roze, we have thought it advisable not to dispose of the objection on such technical ground alone and, as indicated hereinbefore, those objections fail on substantial grounds also. The appeal, in our view, was accordingly rightly admitted in exercise of the power conferred by Section 5 of the Limitation Act and even otherwise, the order of

admission is no longer open to challenge.

27. Let this appeal now be placed for hearing on merits two weeks after the vacation. Respondent to pay to the appellant 20 G.Ms. as costs of this hearing.
Order accordingly.
[19] AIR 1954 SC 411 at p. 414