

BOMBAY HIGH COURT

Karsondas Dharamsey

Vs

Gangabai

(Lawrence Jenkins, C.J. K.C.I.E and Pratt , JJ.)

0.02.1907

JUDGMENT

Lawrence Jenkins, C.J.

1. This is an application for leave to appeal to the Privy Council from an order of the High Court refusing to admit an appeal after the period of limitation prescribed therefor by the Limitation Act.
2. The ground for this refusal was that the appellant had failed to satisfy the Court that he had sufficient cause for not presenting the appeal within the period of limitation. The decree from which it was then desired to appeal was one passed by a single Judge in the exercise of the High Court's original civil jurisdiction.
3. The question now arises whether we have power to grant the leave sought.
4. Mr. Setalvad, for the applicant, argues that the order of refusal, having regard to the definition of "decree" in Section 594 of the Civil Procedure Code, is a final decree within either Clause (a) or Clause (b) of Section 595 of the Civil Procedure Code.
5. He does not rely on Clause (c).
6. But can it be said that that this is a final decree passed on appeal by a High Court ?
7. The meaning of the expression "passed on appeal" has been settled by a line of authorities, which it is right that we should follow (see *Sunder Koer v. Chandishwar Prosad Singh*¹ and the cases there cited). And applying that interpretation to the circumstances of this case, it cannot (in my opinion) be said that there is here a decree passed on appeal by a High Court.
8. Then can it be said that this is a final decree passed by a High Court in the exercise of Original Civil Jurisdiction ?

9. The meaning of the words Original Civil Jurisdiction is made clear by Clause 12 of the Letters Patent read with Clause 15. The application was made not to a Judge exercising Ordinary Original Civil Jurisdiction, but to the High Court, represented by a Bench of two Judges, as the tribunal to which the appeal from the decree of the single Judge would lie.

10. Therefore the order of refusal was not a decree passed by a High Court in the exercise of Original Civil Jurisdiction.

11. It is true that in *Ram Narain v. Parmeswar Narain Mehta*² the Privy Council did consider whether the power of admitting an appeal beyond time might have been exercised.

12. But that in no way concludes the present case, for it does not appear from the report either in the Law Reports or in *Ram Narain v. Parmeswar Narayan*³ that the appeal to the Privy Council was preceded by leave obtained from the High Court under chapter 45 of the Civil Procedure Code.

13. But that is not all, for from the Judgment delivered by Sir Arthur "Wilson it would seem that in that case there had been a dismissal of the appeal and that clearly would be a final decree passed on appeal.

14. Therefore it appears to me we have no jurisdiction to give the leave sought either under Clause (a) or Clause (b) of Section 595 and it is on those clauses alone that the applicant has relied.

15. The application will be dismissed with costs.

Cases Referred.

1(1903) I.L.R. 30 Cal. 679

2(1902) L.R. 30 I.A. 20

3(1902) I.L.R. 30 Cal. 309