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Court : Allahabad

Decided On : Feb-09-1912

Reported in : 14Ind.Cas.59

Judge : Henry Richards, C.J. and ;Banerji, J.

Appellant : Bikram Singh

Respondent : Narain and ors.

Judgement :

1. The point raised in this Letters Patent Appeal is that the learned District Judge having exercised his discretion as to applying the provisions of Section 5 of the Limitation Act to an appeal which was admittedly late, that discretion ought not to have been interfered with in second appeal to this Court. It has been decided in the case of *Tulsha Kunwar v. Gajraj Singh* 25 A. 71 that this Court will not entertain in second appeal a plea that the lower Court was wrong in refusing to apply the provisions of Section 5 unless it is shown that the Court has acted arbitrarily and without exercising a judicial discretion. The same view was taken in the case of *Hamid Ali v. Gaya Din* 26 A. 327. In the case before us, it is quite clear that the learned District Judge dismissed the appeal as time-barred and refused to exercise the discretion conferred on him by Section 5 of the Limitation Act after considering the whole case. The appellant before him had been given time to file an affidavit to explain certain matters. The case had been adjourned but the affidavit was not filed. There were other reasons also which might well have

justified the learned Judge in refusing to apply the provisions of Section 5. Under these circumstances, we do not think that the plea ought to have been entertained by our learned brother. We accordingly allow the appeal, set aside the judgment and order of this Court, and restore the decree of the lower Appellate Court with costs of both the hearings in this Court.

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