

Vasudeva Vs. Chinnasami

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Court : Chennai

Decided On : Aug-29-1884

Reported in : (1883)ILR7Mad584

Judge : Charles A. Turner, Kt., C.J. and ;Hutchins, J.

Appellant : Vasudeva

Respondent : Chinnasami

Judgement :

Charles A. Turner, Kt., C.J.

1. The omission of the Limitation Act to declare expressly that, in calculating the period allowed for the presentation of an appeal, the time during which an application for review is pending should be allowed, shows that the legislature did not intend that this period should be allowed as a matter of right. On the other hand, we are not prepared to say that it should never be allowed. If a person has with what is, under the circumstances, reasonable diligence applied for a review, and the application has been entertained, and there is every reasonable prospect that the petitioner will obtain all by the application that he could obtain by appeal, the Court would be justified in accepting the explanation as a sufficient cause for his not appealing within the time limited.

2. In the case before the Court, the defendant applied for a review of judgment on the very last day before the period limited for appeal had expired, and not on the

ground of the discovery of new evidence, but on grounds which were apparent when the decision was given. The delay apparently ought not to have been condoned, but we cannot interfere on revision with an exercise of discretion, though we may not approve of it; on the further ground that the Judge has non-suited the plaintiff, we allow the objection. There is no such procedure permitted under the Code. If the plaintiff fails to prove his case it must be dismissed and he cannot again sue on the same cause of action, but we are bound to say that there was evidence, which, if accepted, would have justified a decree for the plaintiff. The decree of the Lower Appellate Court is set aside and a re-trial of the appeal ordered. The costs of this application will abide and follow the result.

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