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Court : Kolkata

Decided On : May-05-1924

Reported in : AIR1925Cal253

Appellant : Kailash Chandra Nag and ors.

Respondent : Bejoy Chandra Nag and ors.

Judgement :

Walmsley, J.

1. This is an application for leave to appeal to His Majesty in Council, and it is directed against a judgment passed by a Division Bench of this Court on the 29th August, 1922.

2. A preliminary objection has been taken before us that the application is filed out of time and that it should be rejected on that account. It is necessary, therefore,, to give certain dates. As I have stated the judgment was delivered on the 29th of August, 1922. The decree was signed on the 31st of August, 1922. On November 27 of the same year an application was presented for review of judgment. This application was rejected on July 30, 1923. The present application was filed on August 3, 1923.

3. It was at first suggested to us, that even if the whole period during which the application for review was pending be deducted, this present application is out of

time. This suggestion, however, appears to be due to a mistake in an office note: the application for copy of the judgment was made on November, 22, and not on November, 27.

4. The question then is whether the time during which the application for review was pending should be deducted. It is conceded that the petitioners must show that that application was of such a nature as to entitle them to an extension of time under Section 5 of the Limitation Act. It is necessary, therefore, to examine their application for review. It has been shown to us that of the seven grounds mentioned therein four are identical word for word with four of the grounds set out in the memorandum of appeal, while the remaining three summarize other grounds in the memorandum. Not one of them mentions any fact or advances any argument, such as might be expected in an application under the provisions of Order 47 of the Civil Procedure Code. The application, therefore, was very similar to the one mentioned in the case of *Ashanulla v. The Collector of Dacca* (1888) 15 Cal. 242, in which it was held that the mere presentation of an application for review, where it is not shown that there was reasonable ground for making the review, is not a sufficient ground for not presenting an appeal within time. The decision in the case of *Brij Indar Singh v. Kanshi Ram* A.I.R. 1917 P.C. 156 recognises the same principle and their Lordships of the Privy Council endorsed the view that an appellant was entitled to exclude time spent in prosecuting with due diligence a proper application for review of judgment.

5. In view of what I have said already about the contents of the application for review, and still more in view of what has been stated before us in Court to-day, namely, that the application for review did not set out the real reason on which it was based, it appears to me that the application for review cannot be regarded as a proper one, prosecuted with due diligence, and that consequently the fact that it was made does not entitle the petitioners to an extension of time under Section 5 of the Limitation Act.

6. The result is that in my judgment this application for leave to appeal to His Majesty in Council must be refused with costs: 5 gold mohurs; 3 gold mohurs to Mr. Mazumdar's client and 2 gold mohurs to Mr. Dutt's client.

Sanderson. C.J.

7. I agree.

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