

MANU/BH/0180/1939

Equivalent Citation: AIR1939Pat667

**IN THE HIGH COURT OF PATNA
FULL BENCH**

Appellants: **Babu Lachmeshwar Prasad Shukul and Ors.**
Vs.
Respondent: **Babu Girdhari Lal Chaudhuri and Ors.**

Hon'ble Judges/Coram:

Arthur Trevor Harries, C.J., Saiyid Fazl Ali and C.M. Agarwala, JJ.

JUDGMENT

Arthur Trevor Harries, C.J.

1. These are three applications filed by the appellants in the three appeals praying that the amounts of printing costs in connexion with these three appeals to the Federal Court be accepted and, if necessary, time for depositing the same be extended. The facts of the three cases-differ materially and will be considered later. There was however considerable delay in all three cases in making the necessary deposits, and the first point which has to be determined is whether this Court can extend the time fixed by law for depositing these printing costs. If the Court has no such power, then it matters little what the facts of any particular case may be if the deposit has not been made within the period stipulated. The three applications-first came before a Bench of this Court, and having regard to the general importance of the question that Bench referred the matter to a larger Bench. These applications accordingly have been heard by this Full Bench. A right of appeal to the Federal Court is given by Section 205, Government of India Act, 1935. That Section is in these terms:

(1) An appeal shall lie to to the Federal Court from any judgment, decree or final order of a High Court in British India, if the High Court certifies that the case involves a substantial question of law as to the interpretation of this Act or any Order in Council made thereunder, and it shall be the duty of every High Court in British India to consider in every case whether or not any such question is involved and of its own motion to give or to withhold a certificate accordingly.

(2) Where such a certificate is given, any party in the case may appeal to the Federal Court on the ground that any such question as aforesaid has been wrongly decided, and on any ground out which that party could have appealed without special leave to His Majesty in Council if no such certificate had been given, and, within the leave of the Federal Court, on any other ground, and no direct appeal shall lie to His Majesty in Council, either with or without special leave.

2. In all these cases certificates were given by this Court that the cases involved a substantial question of law as to the interpretation of the Government of India Act, and such is the sole ground of appeal in each case. The Federal Court have drafted rules governing the procedure to be followed in appeals to that Court. Order 9 of these rules makes Order 45, Civil P.C., applicable to appeals to the Federal Court with

certain modifications. Order 9 is in these terms:

1. Where a certificate has been given under Section 205(1) of the Act, the provisions of Order 45 of the Code, as modified and adapted by the Government, of India (Adaptation of Indian Laws) Order, 1937, shall apply in relation to appeals to the Federal Court.

2. Subject to the provisions of Sections 4 and 12, Limitation Act, 1908, applications under Rule 2 or the said Order 45 shall be presented within ninety days from the date of the signing of the decree or order appealed from.

The Government of India (Adaptation of Indian Laws) Order, 1937, adds p rule No. 17 to Order 45, Civil P.C., and makes some other slight amendments to that order. This rule No. 17, which is added to Order 45, Civil P.C., is in these terms:

Where a certificate has been given under Section 205(1), Government of India Act, 1935, the provisions of this Order shall apply in relation to appeals to the Federal Court as they apply in relation to appeals to His Majesty in Council and references in this Order to His Majesty in Council and to any Order of His Majesty in Council shall be construed as references to the Federal Court and the rules of 4ne Federal Court:

Provided that

(a) Rule 3 of this Order shall have effect as if at the end of Sub-rule (1) thereof there were inserted the words "apart from any question of law as to the interpretation of the Government of India Act, 1935, or any Order in Council made thereunder; (b) where the only ground of appeal stated in the petition is that any question of law as to the interpretation of the Government of India Act, 1935, or any Order. In Council made thereunder has been wrongly decided, the petition need not pray for such a certificate as is mentioned in Rule 3, and the like proceedings shall be had thereon as if such a certificate had been given except that no security shall be required for the costs of the respondent.

3. The Government of India (Adaptation of Indian Laws) Order, 1937, makes only formal amendments to the wording of Order 45 Rule 7, Civil P.C., which deals with time for making deposits of printing costs. The material portion of that Rule reads as follows:

(1) Where the certificate is granted, the applicant shall, within ninety days or such further period, not exceeding sixty days, as the Court may, upon cause shown allow from the date of the decree complained of, or within six weeks from the date of the grant of the certificate, whatever is the later date...(b) deposit the amount required to defray the expense of translating, transcribing, indexing and transmitting to His Majesty in Council a correct copy of the whole record of the suit....

The words "His Majesty in Council" must be read as Federal Court. In cases where the only ground of appeal taken is that a question of law on the interpretation of the Government of India Act has been wrongly decided the

word "certificate" in relation to Federal Court appeals must mean the certificate granted under Section 205(1), Government of India Act. In such cases no certificate such as that contemplated by Order 45, Rule 3 is necessary by reason of proviso (b) of Rule 17 which has been added to Order 45, Civil P.C., by the Government of India (Adaptation of Indian Laws) Order, 1937. It will be seen from the terms of Order 45, Rule 7 that printing costs in Privy Council appeals had to be deposited within 90 days of the date of the decree or within a further period of 60 days if so allowed by the Court or within six weeks from the date of the certificate whichever was the later date. In all three cases now before the Court the money was tendered after the expiration of 150 days from the date of the decree and long after the expiration of six weeks from the date of certificate. It has been held repeatedly that "the date of the decree" in this Rule means the date when judgment was actually pronounced, because that latter date is the date which the decree bears: see *Harendra Lal Roy v. Hari Dsi Debi* MANU/WB/0498/1909 : 14 C.W.N. 420 following a decision of their Lordships of the Privy Council in *Owners of the Ship "Brenhilda" v. British India Steam Navigation Co.* 1881 7 Cal. 547.

4. It was contended by the applicants however that a different meaning should be given to the phrase "date of the decree" in this Rule as applicable to Federal Court appeals. Order 9, Rule 2 of the Federal Court Rules deals with applications to this Court in Federal Court matters under Order 45, Rule 2, that is applications similar to applications for leave to appeal to His Majesty in Council. In this Rule of the Federal Court Rules it is stated that such applications are to be made within 90 days from the date of the signing of the decree or order appealed from. It was therefore contended that the starting point from which time ran in such applications was the date when the decree was actually signed and not the date upon which the judgment was pronounced. There is a clear difference in the wording of Order 45, Rule 7(1), Civil P.C., and Order 9, Rule 2 of the Federal Court Rules. The words in Order 45, Rule 7, Civil P.C., are however clear and it is not open to this Court to place any other construction upon them than that which has been placed by all the Courts in India in the past. The phrase "date of the decree" in Order 45, Rule 7(1), Civil P.C., means the date which the decree bears or the date upon which judgment was pronounced. Whether the words "date of signing of the decree" appearing in Order 9, Rule 2 of the Federal Court Rules mean something different from the date of the decree is a difficult question; but the point does not arise in this case, and it is therefore unnecessary for me to offer any opinion upon the question. It is sufficient to say that the starting point of time in Order 45, Rule 7, Civil P.C., is undoubtedly the date which the decree bears and not the date when the decree was actually signed. As I have previously stated, in all these cases no money was tendered for printing costs within 90 days of the date of the decree, and no application was made in any of the cases to extend the time after the expiration of the 90 days. In fact, more than 60 days had elapsed after the expiration of the period of 90 days from the date of the judgments before any of these applications were made. In these circumstances, has the Court any power further to extend the time for the deposit of such printing costs?

5. It was contended on behalf of the applicants that the words "within 90 days or such further period not exceeding 60 days as the Court may upon cause shown allow from the date of the decree complained of" are directory and not mandatory. It is said that normally the deposit should be made within such further period but the discretion of the Court is to be limited, and the period could be extended in proper cases. Order 45, Rule 7(1), Civil P.C., was amended by Act 26 of 1920. Previous to the amendment the

deposit for printing posts had to be made within six months from the date of the decree or within six weeks from the date of the grant of certificate whichever was the later date. By the amending Act of 1920 the words "within 90 days or such further period not exceeding 60 days as the Court may upon cause shown allow" were substituted for the words "within six months." Their Lordships of the Privy Council in *Burjore v. Bhagana* (1884) 10 Cal. 557 held that the words "within six months" were directory and not mandatory, and the Court could allow further time to deposit printing costs in exceptional cases where there were cogent reasons for so doing. It is argued that the amendment merely amounts to substituting words which are directory only for words which had been previously held to be only directory. In my view the meaning of Order 45, Rule 7(1), Civil P.C., as it now stands, is plain. An extension of time may be granted for deposit of printing charges after the expiry of 90 days upon cause being shown, but such extension of time cannot exceed 60 days, and if this further period of 60 days has elapsed, the Court has no power under the rule as it stands to grant further time. The words are, in my view, mandatory and limit the discretion of the Court. If the period of 90 days from the date of the decree has expired, the Court can at most grant a further extension of 60 days. Once that period has elapsed, the Court has no power as the rule stands to grant any further time.

6. The matter however does not rest there as far as appeals to His Majesty in Council are concerned. On 9th February 1920 the date upon which the amendment of Order 45, Rule 7(1), to which I have referred, took effect, His Majesty in Council issued an order rescinding previous rules, orders and regulations relating to appeals to His Majesty in Council and substituting for them other rules regulating the mode, form and time of such appeals. By the terms of this Order in Council of 9th February 1920, all Courts in India are bound to observe the rules therein contained. Rule 9 of this Order in Council of 9th February 1920 reads as follows:

Where an appellant, having obtained a certificate for the admission of appeal, fails to furnish the security or make the deposit required (or apply with due diligence to the Court for an order admitting the appeal), the Court may, on its own-motion or on an application in that behalf made by the respondent, cancel the certificate for the admission of the appeal, and may give such directions as to the costs of the appeal and the security entered into by the appellant as the Court shall think fit, or make such further or other order in the premises as, in the opinion of the Court, the justice of the case requires.

7. In appeals to His Majesty in Council this Rule empowers Courts in India to cancel certificates already given in certain cases. It is to be observed that no such power was given to the Courts under Order 45, Civil P.C. This rule does not compel Courts to cancel certificates in case of failure to make deposits of printing costs. The words used are "may cancel" and not "shall cancel." In such cases if the Court does not cancel the certificate it may make such other order, as, in the opinion of the Court, the justice of the case requires. It was strongly urged on behalf of the applicants that this Rule gives the Court in Privy Council matters a power in proper cases to extend time before making a deposit of printing costs beyond the limits fixed by Order 45, Rule 7(1) and in my view this contention is well founded. Rule 9 of the Privy Council Rules allows the Court either to cancel the certificate or make such other order as the justice of the case demands. It appears to me that the framers of this Rule contemplated that the justice of the case might require a further extension of time, and that being so the Court was expressly granted the power to grant such extension in spite of the mandatory words contained in Order 45, Rule 7, Civil P.C. The words

used in Rule 9 are sufficiently wide to give the Court power to extend time for making deposits of printing costs in proper cases beyond the limits fixed by Order 45, Rule 7, Civil P.C. It must be remembered that Section 112, Civil P.C., contemplates a possible conflict between the rules contained in the Code and the rules framed by His Majesty in Council. That Section expressly enacts that nothing contained in the Code shall be deemed to interfere with any rules made by the Judicial Committee of the Privy Council, and for the time being in force, for the presentation of appeals to His Majesty in Council, or their conduct before the said Judicial Committee.

8. In other words, if there is a conflict between the rules contained in the Code and the rules issued by His Majesty in Council, the latter will prevail. In my view therefore the Court has power in proper cases in appeals to His Majesty in Council to extend time for making deposits of printing costs beyond the limits fixed by the Code. There has been considerable conflict of judicial opinion upon this point. Benches of this Court in *Ramani Ranjan Bilas Upadhyaya v. Durga Dutt* MANU/BH/0103/1926 and *Kamala Kanta Singh v. Binbdhumukhi Dassi* MANU/BH/0047/1929 have held that the Court has no power to extend time for the deposit of printing costs beyond the limits fixed by Order 45, Rule 7, Civil P.C. It would appear however that the Benches did not consider the effect of Rule 9 of the Order in Council dated 9th February 1920, and dealt with the matter as if it was entirely governed by the provisions of Order 45, Rule 7, Civil P.C. In *Govind Narain Singh v. Shamalal Singh* MANU/WB/0444/1926 : 39 C.W.N. 651 Rankin C.J., and Ghose J. of the Calcutta High Court held that Order 45, Rule 7, Civil P.C., and Rule 9 of the Privy Council Rules, 1920, did not give the Court power to extend time beyond the limits defined in Order 45, Rule 7, Civil P.C., and a similar view was expressed by the Lahore High Court in *Munna Lal v. Gajraj Singh* A.I.R. (1935) Lah. 733. On the other hand, the High Courts of Bombay, Madras and Allahabad have taken a different view. In *Nilkanth Bulwant v. Sachidanand Vidya Narshimha* MANU/MH/0001/1927 a Full Bench held that the effect of Rule 9 of the Order in Council, 1920, was to give power to the Court in proper cases to extend the time beyond the limits fixed by the Code. A similar view was expressed by a Madras Full Bench in *Ramayya v. Lakshmayya* A.I.R (1938). Mad. 796 and by a Full Bench of five Judges of the Allahabad High Court in *Bishnath Singh v. Court of Wards Estate of Sri Ram Chandra* MANU/UP/0007/1939 : AIR1939All299 . This latter case overruled the earlier Full Bench case in *Bahadur Lal v. Judges of the High Court Allahabad* MANU/UP/0213/1933 : AIR1933All241 in which it was held, Niamatullah J. dissenting, that Rule 9 of the Order in Council of 1920 gave the Court no discretion to extend time beyond the limits fixed by Order 45, Rule 7, Civil P.C.

9. I respectfully agree with the views expressed by the learned Judges in the Bombay, Madras and Allahabad Full Bench cases, and I am of opinion that in Privy Council appeals this Court has power in proper cases to extend time for making deposit of printing costs beyond the limits fixed by Order 45 Rule 7, Civil P.C.

The next question to be determined is whether this power is given to the Courts in proceedings relating to appeals to the Federal Court. As I have stated previously, Order 9, Rule 1 of the Federal Court Rules provides that.

the provisions of Order 45 of the Code, as modified and adapted by the Government of India (Adaptation of Indian Laws) Order, 1937, shall apply in relation to appeals to the Federal Court.

The word "Code" is defined in the Federal Court Rules in Order 1, Rule 2. The definition is as follows:

In these rules, unless the context otherwise requires.... "Code" means the Civil Procedure Code, 1908, as amended or modified by any Order in Council or by or under any Central Act.

10. Rule 9 of the Order in Council of 9th February 1920 does, in my view, modify Order 45, Rule 7, Civil P.C., because it empowers the Court in proper cases to grant further time to deposit printing costs, though such power is expressly confined within certain limits in Order 45, Rule 7. If Order 45, Rule 7, as modified by Rule 9 of the Order in Council of 9th February 1920 is to apply to Federal Court appeals, then this Court has power in proper cases to extend the time for depositing printing costs in Federal Court appeals. It has been contended, however, that Order 9, Rule 1 of the Federal Court Rules only contemplates one modification of Order 45 of the Code, that is the modification made by the Government of India (Adaptation of Indian Laws) Order 1937, and that being so, it is urged that the context requires that the word "Code" appearing in Order 9, Rule 1 of the Federal Court Rules should be read as the Civil Procedure Code, 1908, and not as the Civil Procedure Code, 1908, as amended or modified by any Order in Council. In short, it is urged that as one modification only is mentioned all other modifications of the Code previously made by Orders in Council must be disregarded. If other modifications of the Code were contemplated by the framers of the Federal Court Rules, it is contended that it would have been sufficient to say in Order 9, Rule 1 that "the provisions of the Code shall apply in relation to appeals to Federal Court" as by the definition" of the word "Code" means the Code of Civil Procedure, 1908, as amended or modified by any Order in Council which would include the Government of, India (Adaptation of Indian Laws) Order, 1937.

11. In my view the word "Code" in Order 9 Rule 1 of the Federal Court Rules must be given the meaning given to that word in the definition contained in the Rules. There is nothing in the terms of Order 9 Rule 1 of the Federal Court Rules which demands that the word "Code" should be given any meaning other than the meaning given in the definition. In my judgment what Order 9 Rule 1 of the Federal Court Rules means is that Order 45, Civil P.C., as amended or modified by any Order in Council and in particular as modified and adapted by the Government of India (Adaptation of Indian Laws) Order, 1937, shall govern the procedure in Federal Court appeals. As Order 45, Rule 7, Civil P.C., has been modified by Order in Council of 9th February 1920, so as to give the Court power to extend time to make a deposit in Privy Council appeals, such power is also given to the Court in relation to Federal Court appeals by reason of Order 9 Rule 1 of the Federal Court Rules. To hold otherwise would be to deprive an appellant to the Federal Court of a right which he undoubtedly has in connexion with appeals to His Majesty in Council. It is to be observed that Rule 9 of Order in Council of 9th February 1920 only empowers the Court to extend time when the justice of the case requires it, and it is clear that this power should only be exercised in exceptional cases. In *Burjore v. Bhagana* (1884) 10 Cal. 557 a case on Order 45 Rule 7, Civil P.C., before the amendment of 1920, their Lordships of the Privy Council held that time should not be extended beyond six months unless there were cogent reasons for doing so, and this has been emphasized in the Full Bench cases of Bombay, Madras and Allahabad, to which I have referred. All the Courts which have held that a Court has power to extend the time to make a deposit in Privy Council appeals, have also held that such power should be exercised with great caution and only where there are cogent reasons for doing so. In short, it is only where the justice of the case demands that the Court should extend time that such extension should be given. It will be therefore necessary to consider the particular facts of each of these cases to see whether such cogent reasons exist which demand that the Court

should exercise its discretion in favour of the appellants and extend time for making the deposit of printing costs.

12. Federal Court Appeal No. 10 of 1939.

The facts in the application in Federal Court Appeal No. 10 of 1939 can be shortly stated as follows: This Court delivered judgment on 19th December 1938, and granted a certificate that the case involved a substantial question of law as to the interpretation of the Government of India Act. On 13th March 1939 the decree of the High Court was actually signed and on 27th March 1939 the appellants made an application to this Court under Order 45, Rule 2, Civil P.C. On 12th April 1939 notice was served upon the appellants by this Court of the amount of the deposit necessary for printing costs. The appellants did not deposit the money, and on 31st July 1939 the office placed the matter before a Bench for orders. On 1st September 1939 the appellants filed an application in this Court intimating that he was then in a position to pay the money and that time for acceptance of the same should be extended, and this is the application now before the Court. The date of the decree and certificate is 19th December 1938, and the applicants should have deposited this sum within 90 days of 19th December 1938. The 90 days expired on 28th March and no application was made to the Court to extend the time. "The further period of sixty days expired on 27th May and no application of any kind was made until 1st September and no explanation has been given for the delay beyond a vague statement that there was difficulty in obtaining the money. The amount involved was Rs. 253.3-0 and in my view, there are no cogent reasons in this case why the Court should exercise its discretion and extend the time. There has been great delay and in my view, the application to extend time for making the deposit should be rejected.

13. Federal Court Appeal No. 14 of 1939.

In this case judgment of the High Court was delivered on 23rd January 1939, and a certificate given under Section 205(1), Government of India Act, 1935. On 13th March 1939, the decree was signed, and on 21st April 1939, the appellants filed a petition in this Court under Order 45, Rule 2, Civil P.C. On 11th May 1939, this appeal was consolidated with another appeal (Federal Court Appeal No. 13 of 1939) and an order was made apportioning the costs. On 11th May 1939, the office served an estimate of the printing costs upon the appellants and that estimate was for Rs. 93-3-0. On 24th July 1939, which was the opening day of the Court after the long vacation, this money was tendered but was refused by the Court as the tender was out of time. On 25th July 1939, the appellants filed this application praying for extension of time to deposit the money if such extension was necessary.

14. According to the appellants, appellant 1 contracted small-pox shortly after 11th May 1939, and was seriously ill for a considerable time. Appellant 2 who is the son of appellant 1, attained majority shortly before 11th May 1939, and it is said that he had to attend on his father and further that he was ignorant of matters connected with the limitation. Further it is said that after the attack of small-pox appellant 1 developed a scrotal tumour which incapacitated him for some time. For these reasons it is said that the appellants were unable to come to Patna and instruct lawyers to make the deposit before 24th July 1939; more than 150 (one hundred and fifty) days elapsed from the date of the decree, but, in my view, there are cogent reasons in this case why time should be extended. The facts mentioned by the appellants have been verified by affidavit, and it is to be noted that these facts are not contradicted by the respondents. If appellant 1 who was the karta of the family was incapacitated by

small pox, then there was good reason why the money was not paid within the period allowed by law. There seems to be no reason to doubt that appellant 2 was too inexperienced to take any steps to make the deposit or to apply for an extension of time. For these reasons I would extend the time for making the deposit and direct that the money tendered on 24th July 1939, be accepted.

15. Federal Court Appeal No. 17 of 1939.

In this case the judgment of the High Court was delivered on 17th January 1939, and a certificate given under Section 205(1), Government of India Act, 1935. The decree was signed on 13th February 1939, and on 11th May 1939, the appellants filed a petition under Order 45, Rule 2, Civil P.C. The High Court vacation was from 12th May 1939 to 23rd July 1939. On 29th May 1939, notice of the amount of printing costs, namely Rs. 210, was served upon the appellants, and on 24th July 1939 that is, on the opening day of the Court after the vacation) the money was tendered and accepted by the learned Registrar subject to any orders passed by a Bench of the Court, One hundred and fifty days expired on 16th June 1939, that is during the vacation, and it was urged on behalf of the appellants that as the Court was closed they could not make a deposit until the opening day of the Court.

16. In my judgment this Court is not closed during the vacation, and the money can be deposited and, if tendered, will be accepted. It will be observed that the notice of the amount of printing costs was actually sent by the office on 29th May 1939, and that was during the vacation. It has been expressly decided in this Court in *Jai Kissen v. Baijnath Ram Marwari* MANU/BH/0210/1927 that a deposit for printing costs may be made when the Court is not sitting but when the office is open. I am satisfied however that there has been considerable misunderstanding as to what business the office of this Court transacts during the vacation. In *Anand Ram v. Ramghulam Sahu* Pat. 150, the question arose as to whether appeals could be filed during the vacation, and certain correspondence is referred to in that report from which it is clear that the position with regard, to this office during the vacation was far from clear. I am satisfied that there is considerable confusion even today, as no orders have been issued as to what the Court will or will not do during the vacation. The appellants in this case state that they were under the impression that if the money was deposited on the opening day of the Court, namely 24th July 1939, it would be accepted as being within time. Such has been the view of a large number of litigants, and they are not entirely to blame for such a view. The matter has not been made clear in the past, and that being so I am quite prepared to, believe that the appellants honestly believed that they could deposit this money on the opening day of the Court. This is not an ordinary case of ignorance of the law, and to a large extent the mistake committed by the applicants was due to the failure of the Court in making the position clear. That being so, I am prepared to hold that there are cogent reasons in this case for extending the time for making a deposit, and accordingly I would direct the office to accept the deposit which was tendered on 24th July 1939.

17. For the reasons which I have given, I would therefore refuse to extend the time in Federal Court Appeal No. 10 of 1939 and dismiss the application. I would however extend the time in Federal Court Appeals Nos. 14 and 17 of 1939 and direct the office to accept the money tendered. In all the circumstances, I would make no order as to costs of these applications.

Saiyid Fazl Ali, J.

I agree.

C.M. Agarwala, J.

18. I agree to the order proposed. As however the reasons for my conclusion differ widely from those of my Lord the Chief Justice, I propose to state them in detail and to analyze the law bearing on the question at issue. The ordinary appellate jurisdiction of the Federal Court is described in Section 205, Government of India Act, 1935, and the Federal Legislature has been empowered to enlarge this jurisdiction by Section 206. Section 205(1) gives a right of appeal to the Federal Court from any judgment, decree or final order of a High Court in British India, if the High Court certifies that the case involves a substantial question of law as to the interpretation of the Act or any Order-in-Council made thereunder, and casts upon the High Court the duty to consider, in every case, whether or not such a question is involved, and of its own motion to give or withhold a certificate accordingly. Where a certificate is given, any party in the case may appeal to the Federal Court, (1) on the ground that any question as to the interpretation of the Government of India Act or of an Order-in-Council made thereunder has been wrongly decided; (2) on any ground on which that party could have appealed to His Majesty in Council if no such certificate has been given; and (3) with the leave of the Federal Court, on any other ground : [Section 205(2).]

By the Government of India (Adaptation of Indian Laws) Order, 1937, Section 111-A has been added to the Code and by it Sections. 109, 110 and 111 of the Code have been declared to apply to appeals to the Federal Court as they apply in relation to appeals to his Majesty in Council, provided that.

(a) so much of the said Sections as delimits the cases in which an appeal will lie shall be construed as delimiting the cases in which an appeal will lie without the leave of the Federal Court otherwise than on the ground that a substantial question of law as to the interpretation of the said Act, or any Order-in-Council made thereunder, has been, wrongly decided:

(b) in determining under Clause (c) of Section 109 whether the case is a fit one for appeal, and, under Section 110, whether the appeal involves a substantial question of law any question as to the interpretation of the said Act, or any Order-in-Council made thereunder shall be left out of account.

19. As to the procedure in appeals to the Federal Court none of the provisions of the Civil Procedure Code apply to any proceedings in the Federal Court unless expressly incorporated in the Rules of the Federal Court (Order 11, Rule 5). The procedure in the Federal Court in relation to appeals from that Court to His Majesty in Council is prescribed by Order 32 of these Rules which applies the provisions of Order 45 of the Code, with certain modifications. So far as appeals from the High Courts to the Federal Court are concerned, Order 9, Rule 1, provides:

Where a certificate has been given under Section 205(1) of the Act, the provisions of Order 45 of the Code, as modified and adopted by the Government of India (Adaptation of Indian Laws) Order, 1937, shall apply in relation to appeals to the Federal Court.

20. The only alteration in Order 45 of the Code effected by the Adaptation of Laws Order, so far as appeals to the Federal Court are concerned, is the addition of Rule 17 which is in these terms:

17. Where a certificate has been given under Section 205(1), Government of India Act, 1935, the provisions of this Order (i.e. Order 45 of the Code) shall apply in relation to appeals to the Federal Court as they apply in relation to appeals to His Majesty in Council and references in this Order to His Majesty in Council and to any Order of His Majesty in Council shall be construed as references to the Federal Court and the rules of the Federal Court.

Provided that:

(a) Rule 3 of this Order shall have effect as if at the end of Sub-rule (1) thereof there were inserted the words apart from any question of law as to the interpretation of the Government of India Act, 1936, or any Order-in-Council made thereunder;

(b) Where the only ground of appeal stated in the petition is that any question of law as to the interpretation of the Government of India Act, 1935, or any Order-in-Council made thereunder has been wrongly decided, the petition need not pray for such a certificate as is mentioned in Rule 3, and the like proceedings shall be had thereon as if such a certificate had been given except that no security shall be required for the costs of the respondent.

Rule 2 of Order 45 of the Code provides:

Whoever desires to appeal to His Majesty In Council shall apply by petition to the Court whose decree is complained of.

Rule 3(1) requires the petition to, (1) state the grounds of appeal, and (2) pray for a certificate either: (a) that as regards amount or value and nature, the case fulfils the requirements of Section 110, or (b) that it is otherwise a fit one for appeal to the Federal Court. Rule 3(1) is to be read as if, at the end of it, there were inserted the words "apart from any question of law as to the interpretation of the Government of India Act, 1935, or any Order in Council made thereunder:" [Proviso (a) to Rule 17].

And where such a question is the only one to be raised in the appeal, (i) it is not necessary to pray for the certificate referred to in Rule 3(1), and (ii) the appellant is not required to furnish security for the respondent's cost: [Proviso (b) to Rule 17].

21. In cases in which the certificate mentioned in Rule 3(1) is required, and is refused the petition for leave to appeal must be dismissed: [Rule 6]. Where the certificate is granted the applicant is required to (i) furnish security and (ii) deposit the amount required for certain expenses: [Rule 7(1)].

The security must be furnished and the deposit made within: (a) 90 days (or such further period, not exceeding 60 days, as the Court may upon cause shown allow) from the date of the decree complained of, (b) or within 6 weeks from the date of the grant of the certificate, whichever is the later date: [Rule 7(1)].

22. A question has been raised whether "the date of the decree" referred to in Rule 7(1) is the date on which the decree is actually signed or the date which the decree bears. The decrees in these present cases being decrees of the High Court to which the Code of Civil Procedure applies bear date the day on which the judgments were

pronounced, as required by Order 20, Rule 7 of the Code. It may be contended that if the Federal Court Rules had intended to provide that limitation should run from the date on which the decree was actually signed they would have said so, as in Order 9, Rule 2 which deals with limitation for an application under Order 45, Rule 2, and provides that the period shall run from the date of signing the decree or order appealed from. In the present cases this point is not of any importance because whether the period of limitation for making the deposits required by Rule 7(1) be reckoned from the date which the decrees bear or from the date on which they were signed, the deposits were beyond the period prescribed by that Rule. Nor are we concerned with the alternative period, viz. six weeks from the date of the certificate, as no certificate under Rule 3(1) was required or granted. Section 205(1), Government of India Act, 1935, and Order 45, Rule 17, proviso (b) of the Code, introduced by the Adaptation Laws Order, having made it quite clear that when the only ground of appeal is that a question of law as to the interpretation of the Act or any Order in Council made thereunder has been wrongly decided, the aggrieved party, in such a case, has an unrestricted right of appeal which is not dependent on the grant of a certificate under Order 45, Rule 3.

23. In all these three cases the only ground of appeal is that a question of law as to the interpretation of the Act has been wrongly decided, and in each case "the date of the decree" is 13th March 1938, which was the date on which judgment was delivered in each of the cases, although in the case of Appeal No. 10 the decree was actually signed on 19th December 1938, in the case of Appeal No. 14 on 23rd January 1939, and in the case of Appeal No. 17 on 17th January 1939. In Appeal No. 10 the costs were not tendered until 1st September 1939; in No. 14 the deposit was tendered on 24th July 1939, but refused by the office; and in No. 17 the deposit was tendered on 24th July 1939, and accepted by the office subject to objection. In none of the cases, therefore, has the deposit been made within the 90 days prescribed by Rule 7(1), or even before the expiry of the further 60 days which the Court might, upon cause shewn, have allowed. The Court's annual vacation was from 12th May to 22nd July 1939, and the 23rd was Sunday. During the vacation a Bench of two Judges was sitting to deal with criminal work and other work of an urgent nature. Throughout the vacation the office was open.

24. Two questions arise for decision: (1) Is this Court empowered to extend the period of limitation beyond the 60 days mentioned in Rule 7(1)? and (2) In the circumstances of these cases should that power be exercised in favour of any of the present appellants? The view taken in this Court, so far as appeals to His Majesty in Council are concerned, is that this Court has no power to extend time beyond the period of sixty days prescribed by Rule 7(1), *Jai Kissen v. Baijnath Ram Marwari* MANU/BH/0210/1927 *Kamala Kanta Singh v. Binbdhumukhi Dassi* MANU/BH/0047/1929 The same view was taken in *Ram Dhar v. Prag Narain* A.I.R. (1922) . All. 43, *Munna Lal v. Gajraj Singh* A.I.R. (1935) . Lah. 733, *Poornananthachi v. Gopalaswami Odayar* A.I.R. (1932) Mad. 484 and *J.N. Surty v. T.S. Chettyar Firm* A.I.R. (1927) Rang 20. The contrary view was taken in *Nilkanth Bulwant v. Sachidanand Vidya Narshimha* MANU/MH/0001/1927 and in later Full Benoh decisions of the Allahabad and Madras High Courts, *Bishnath Singh v. Court of Wards Estate of Sri Ram Chandra* MANU/UP/0007/1939 : AIR1939All299 and *Ramayya v. Lakshmayya* A.I.R. (1938) Mad. 796 Prior to 1920 the period prescribe by Order 45, Rule 7, was six months. It was held by the High Courts that the Court had a discretion to extend this period. In 1920 the period was reduced to 90 days and the further period to which the Court might extend the time was expressly limited to 60 days. This Court and the Rangoon Court, and the Allahabad and Madras Courts in their earlier

decisions, held in the cases referred to above, that it does not lie within the discretion of the Court to extend the time beyond 60 days.

25. The Bombay High Court, and the High Courts of Allahabad and Madras in their later decisions, take the contrary view. This view is based on para. 9 of an Order-in-Council dated 9th February 1920, which is an Order "for regulating the mode, form and time of appeal to be made from the decisions of any Court of Judicature in India" to His Majesty in Council. It has been held that para. 9 of this Order confers upon the High Courts a discretion to extend the time prescribed by Order 45, Rule 7(1), Civil P.C. for the furnishing of security or deposit of costs in appeals to the Privy Council.

26. It is now contended that para. 9 also enables the High Courts to extend the time prescribed by Order 45 for the furnishing of security or deposit of costs in appeals to the Federal Court. This contention is founded on Order 9, Rule 1, of the Rules of the Federal Court and the definition of "Code" in Order 1, Rule 2 of those Rules. "Code" is there defined as "the Civil Procedure Code, 1908, as amended or modified by any Order-in-Council or by or under any Central Act," unless the context otherwise requires. Order 9, Rule 1 of the Rules of the Federal Court applies to Civil appeals to that Court the provisions of Order 45 of the Code as modified and adapted by the Government of India (Adaptation of Indian Laws) Order, 1937."

27. It is argued that the word "Code" in this Rule must be read in the sense assigned to it in Order 1, Rule 2, and that when so read it includes para. 9 of the Order-in-Council dated 9th February 1920. The answer to that argument is that the Adaptation of Laws Order of 1937 is also an Order-in-Council and if all Orders-in-Council were intended to be included in the word "Code" in Order 9, Rule 1, the words "as modified and adapted by the Government of India (Adaptation of Indian Laws) Order, 1937" in that Rule are redundant. I am supported in my conclusion that the word "Code" in Order 9, Rule 1 is not used in the wider sense in which it is defined in Order 1, Rule 2, by the following consideration. If para. 9 of the Order-in-Council of 1920 applies to appeals to the Federal Court then the whole of that Order applies. Now para. 1 of that Order-in-Council provides:

Applications to the Court for leave to appeal to His Majesty in Council shall be made within 90 days of the decree or order to be appealed from, subject to Sections 4, 5 and 12, Limitation Act, 1908.

28. This must be compared with Order 9, Rule 2 of the Rules of the Federal Court:

Subject to the provisions of Sections 4 and 12, Limitation Act, 1908, applications under Rule 2 of the said Order 45 shall be presented within 90 days from the date of the signing of the decree or order appealed from.

29. If the Order-in-Council of 1920 applies to appeals to the Federal Court it was entirely Unnecessary to state in Order 9, Rule 2, that Sections 4 and 12, Limitation Act, apply to applications to prefer such appeals, for these Sections would apply by reason of para. 1 of the Order-in-Council. Furthermore, while the Order-in-Council expressly applies Section 5, Limitation Act, to appeals to His Majesty in Council, Order 9, Rule 2 of the Rules of the Federal Court deliberately omits any reference to that Section and also prescribes that the period of limitation shall be "ninety days from the date of the signing of the decree or order appealed from" and not, as provided in the Order-in-Council, "ninety days of the decree or order to be appealed from" which, by reason of Order 20, Rule 7 of the Code, means ninety days from the date on which the judgment was pronounced. I would therefore hold that neither

para. 9 nor any of the other paragraphs of the Order-in-Council of 1920 applies to appeals to the Federal Court and, consequently, that this Court has no power to extend the time prescribed by Order 45 of the Code in the case of appeals to the Federal Court.

30. It remains to consider the question whether, apart altogether from judicial discretion, a litigant has a right to an extension of the prescribed time. In this connexion Section 4, Limitation Act, 1908, and Section 10 General Clauses Act, 1897, require consideration. Section 4, Limitation Act, 1908, provides:

4. Where the period of limitation prescribed for any suit, appeal or application expires on a day when the Court is closed, the suit, appeal or application may be instituted, preferred or made on the day that the Court re-opens.

31. The furnishing of security or the depositing of costs is not, in my view, an "application", which means, as I understand the word in this Section, an application to the Court to take some step which the Court is empowered to take only on being requested, to do so, such as execute a decree, set aside an execution sale, etc. When making a deposit of costs the appellant does not move the Court to do anything. Furthermore, it is noticeable that although the Rules of the Federal Court provide that Section 4, Limitation Act, shall apply to the period of 90 days prescribed for an application under Order 45, Rule 2 [see Rules of the Federal Court, Order 9, Rule 2] they make no such provision with respect to the action to be taken under Rule 7(1). Section 148 of the Code does not apply because the periods of 90 and 60 days in Order 47, Rule 7 are fixed by the Code and not by the Court. The relevant portions of Section 10, General Clauses Act, 1897, are as follows:

10(1). Where, by any Central Act...made after the commencement of this Act, any act...is directed or allowed to be done or taken in any Court or office...within a prescribed period, then, if the Court or office is closed...on...the last day of the prescribed period, the act...shall be considered as done or taken in due time if it is done or taken on the next day afterwards on which the Court or office is open:

Provided that nothing in this Section shall apply to any act...to which the Limitation Act, 1877 (now the Act of 1908) applies.

(2) This Section applies to all Central Acts...made on or after the fourteenth day of January 1887.

As Section 4, Limitation Act, does not, in my view, apply to a deposit of costs, there is nothing in the Limitation Act which applies to the making of such a deposit, and the matter is governed by Section 10, General Clauses Act.

32. The next question is whether the appellants are entitled to an extension of time under this Section. First, with regard to the expression "Court or office." Here, I, think, an act directed or allowed to be done or taken in an office is used in this Section in contradistinction to an act directed or allowed to be done or taken in a Court, and that "office" does not here include the office of a Court, for when a litigant is required to do a particular act to further his suit or appeal, it is really in Court that he is required to do it although for the sake of convenience and to save the time of Judges it is in fact done in the office of the Court. The office of the Court is merely

the hand with which the Court performs some of its functions. If this be so, the fact that the office of a Court remains open while the Court itself is closed for judicial business will not deprive a litigant of the extended time for doing an apt to which Section 10, General Clauses Act, applied.

33. It has been pointed out that in Appeals Nos. 14 and 17 the office of the Court served estimates of costs on the appellants during the vacation and it was suggested that this indicates that the Court was not closed within the meaning of Section 10. As I have stated above, two Judges sit during the vacation to deal with criminal work and other urgent work. They do not necessarily sit every day of the vacation. Usually there is so much criminal work for them to do that no other work is dealt with unless it is really of an urgent nature. In practice the only civil work which is ordinarily, entertained in the vacation consists of applications for stay of execution or sale, and it cannot be overlooked that it is hob only those Judges who are not on vacation duty who avail themselves of the vacation, but also the majority of advocates, who are officers of the Court. In these circumstances it seems to me that the Court is closed for ordinary business during the annual vacation. This conclusion is in accordance with the decision of the Taxing Judge of this Court in *Anand Ram v. Ramghulam Sahu* A.I.R. (1923) Pat. 150. The facts of that case were as follows: A memorandum of appeal properly stamped in accordance with the then current Court-fees Act was presented to the Assistant Registrar on 18th August 1922 during the vacation. On that date the Registrar, who is the officer whom this Court has appointed to receive memoranda of appeal was not in Patna. An amendment of the Court-fees Act which enhanced the fees payable on memoranda of appeal came into operation on the 24th August. The Court reopened, after the Vacation, on 23rd October. The question for decision was whether the presentation to the Assistant Registrar before the amendment was a valid presentation or not. In the course of his judgment the Taxing Judge observed:

There are ample authorities to shew that a memorandum of appeal presented during the vacation to the proper officer appointed in that behalf will be a valid presentation although it is open to the appellant to present a memorandum of appeal on the first day of the opening of the Court under the law of limitation if the time fixed for the filing of the same expires during the vacation. This is for the benefit litigants. But there is nothing to prevent the presentation of a plaint or memorandum of appeal during a vacation or even on a Sunday, provided it is presented to a proper officer.

34. This case decided (1) that although presentation to a proper officer on a dies non is a valid presentation, (2) a presentation on the re-opening day is a presentation within time even when the prescribed period of limitation has expired. This latter proposition proceeds on the view that the Court is "closed," within the meaning of Section 4, Limitation Act, during the vacation, although the vacation Judges attend Court for urgent judicial business. In another case, *Jai Kissen v. Baijnath Ram Marwari* MANU/BH/0210/1927 a Division Bench held that where the Court is not sitting but the office is open, the time for a deposit of the printing costs of a Privy Council appeal cannot be deemed to expire on the next day when the Court actually sits. The learned Judges refer neither to the decision in *Anand Ram v. Ramghulam Sahu* A.I.R (1923) Pat. 150 nor to Section 10 General Clauses Act. Their decision is apparently based on a distinction between the Court and the office of the Court, a distinction, which I have already indicated above, should, in my view, be held not to exist.

35. In this view of the matter I would hold that in Appeal No. 14 the deposit was tendered in time and was wrongly refused by the office; and that in Appeal No. 17 the deposit was made in time. In each of these appeals the deposit should be accepted. With regard to Appeal No. 10 I would hold that as no deposit was made within the prescribed period it cannot be accepted as the Court has no power to extend the time beyond the 60 days, which have elapsed.

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