Keshar Sugar Works vs R.C. Sharma And Ors. on 11 May, 1950

Equivalent citations: AIR1951ALL122, AIR 1951 ALLAHABAD 122

ORDER

Wali Ullah and Sankar Saran, JJ.

1. These are two connected applications for leave to appeal to the Federal Court under O

2. It appears that a draft decree prepared by the office was amended and the decree of t

3. Similarly we have been referred to the cases of Murlidhar v. Motilal, A.I.R. (24) 193

4. In view of the general importance of the question involved we consider it. desirable

Malik, C.J.

5. The point for determination by this Full Bench is whether an appellant is entitled to have the period taken in preparation of a decree or formal order deducted from the period of limitation fixed for an appeal even if he has not filed an application for a copy of the decree or formal order.

6. The facts of the case are that the plaintiffs, Kesar Sugar Works Ltd., and another filed a suit for recovery of money amounting to Rs. 6665-3-3 against E. C. Sharma and others. The defendants put in a counter claim for Rs. 28,000/-. The lower Court decided against the plaintiffs but decreed the defendants' claim to the extent of Rs. 24,817-8-9, The plaintiffs filed F. A. No. 396 of 1941 and valued it at Rs. 35,000/-. The defendants filed a cross-objection and valued it at Rs. 3000/-. The appeal came up for hearing before a Bench of this Court on 21-2-1947, when the plaintiffs' claim was decreed to the extent of Rs. 2,872-6-3 and the defendants' claim was decreed to the extent of Rs. 7319-15-6. In the result, the defendants' claim was decreed for Rs. 4,447-9-3 with future interest and proportionate costs. The office prepared a draft decree on 11-4-1947, which was checked by the Head decree writer on 26-4-1947, and the draft decree was put up on the notice board for any objection that the parties might like to make. On 30-4-1947, some objections were filed by the plaintiffs. These objections were heard and decided on 6-10-1947. In accordance with this order some amendments were made in the draft decree and the decree was signed by the Deputy Registrar and was ready on 17-10-1947.

7. It was not till 19-11-1947, that the plaintiffs filed an application for a copy of the decree. The copy was ready on 29th, November, the plaintiffs took delivery of it on 2nd December and on 11-12-1947,

the plaintiffs filed a petition under order 41, (sic) (45 ?) Rule 2, Civil P. C., for leave to appeal to His Majesty in Council. Under Article 179, Limitation Act, the period of limitation for such an application is ninety days from the date of the decree appealed from. It is now well settled and is not disputed by counsel for the parties that to such an application Section 12, Limitation Act of 1908, applies and the time requisite for obtaining a copy of the decree appealed from has to be excluded, though it is not necessary under the rules to file a copy of the decree along with the application for leave to appeal (see Pramatha Nath v. W.A. Lee, 49 I. A. 307 : (A. I. R. (9) 1922 P. C. 352).

8. The question that arises for determination is whether the plaintiffs are entitled to deduction of the period between 19-11-1947, the date when the plaintiffs applied for a copy, and 29-11-1947, when the copy was ready, or also the period from 21-2-1947, when the judgment was pronounced, to 17-10-1947, when the decree was signed by the Deputy Registrar and was ready.

9. The point came up for consideration before the Calcutta High Court in the case of Bani Madhub v. Matungini Dassi, 13 Cal. 104 (F. B.). In that case there were two appeals before the Court and in one of them the judgment of the first Court was pronounced on 17-7-1883, the date on which the original decree was signed by the presiding officer was 23-7-1883, the date on which the application for copy was made was 3-8-1883, the date on which the copy of the decree was ready for delivery was 11-8-1883, and the appeal was filed on 30-8-1883. In the other case the date of the first Court judgment was 27-2-1884, the date on which the application for copy was made was 29-2-1884, the original decree was signed on 4-3-1884, the copy was ready on 7-3-1884, and the appeal was filed on 7-4-1884, the 6th April being a Sunday. The period of limitation under Article 152, Limitation Act, from the judgment of the trial Court (Munsif) was thirty days from the date of the decree and the question was from what date was this period to be computed. Under Section 205, Civil P. C., Act XIV [14] of 1882, (which is now Order 20, Rule 7, Act v [5] of 1908) the decree had to bear the date on which the judgment was pronounced and the Judge had to sign the decree when he was satisfied that the decree was drawn up in accordance with the judgment. It was pointed out by the Full Bench that whatever might be the day on which the actual signature was made, the date of the decree, for all purposes, was to be the date on which the judgment was pronounced. The words "the time requisite for obtaining a copy of the decree appealed against" came up for consideration and, so far as I can see, the only ground, on which it was held that the period taken for preparation of the decree must also be considered to be the time requisite for obtaining a copy, was that it would otherwise be unfair to the appellant. This case came up for consideration before Full Benches of this Court in two cases: (l) Parbati v. Bhola, 12 ALL. 79 : (1890 A. W. N. 25) and in (2) Bechi v. Ahsan-Ullah Khan, 12 ALL. 461 : (1890 A. W. N. 149 F. B.).

10. In the first case the judgment was pronounced by the lower appellate Court on 29-3-1887, the decree was signed by the Judge on 1-4-1887, but in accordance with Section 579 of the old Code of Civil Procedure (now Order 41, Rule 35) it bore the date on which the judgment was pronounced, on 15-4-1887, the plaintiff applied for a copy of the decree, on 23-4-1887, the copy was ready for delivery and on 12-5-1887, she presented an application under Section 592 of the Code (now Order 44) for leave to appeal as a pauper. Dealing with the decision of the Calcutta High Court in Bani Madhub Mitter's case (13 Cal. 104 F. B.) Sir John Edge, C. J., said that where the decree appealed from is not signed until a date subsequent to the date of delivery of judgment, the interim time

should be allowed, but he said that this could only be done under Section 12, Limitation Act, if the delay in signing the decree delayed the applicant in obtaining a copy of the decree and not otherwise and pointed out that in the case before him no application for copy was made until the 15th April; so that in no sense was the applicant delayed in obtaining a copy of the decree by the fact that the decree was not signed by the Judge on the date the judgment was pronounced, but was signed on the 1st April and held that the period between the 29th March and the 1st April could not be deducted.

11. In the second case Bechi v. Ahsan-Ullah Khan, (12 ALL. 461 : 1890 A. W. N. 149 F. B.) where the Court of the first instance had decided the case on 23-5-1887, the decree of that Court was signed by the Subordinate Judge on 31-5-1887, on the same day the defendants had applied for copies of the judgment and decree, they were informed of the estimated cost on 1-6-1887, they paid the estimated cost on 9-6-1887, the copies were delivered to them on 11-6-1887, and they filed the appeal on 30-6-1887. The question arose whether the period between the 23rd of May and the 3lth of May 1887, should be considered as the period requisite for obtaining a copy of the decree. Dealing with this point Mahmood J., quoted with approval the views expressed by Sir John Edge C. J., in the case of Parbati v. Bhola (12 ALL. 79 : 1890 A. W. N. 25) mentioned above and expressed himself thus :

> "Now, in the first place I entertain no doubt that it is necessary, and indispensable, for a litigant who intends to appeal from a decree which is the result of a judgment against him, and which decree must, under the law, bear date the day on which the judgment was pronounced, to apply for a copy of the decree and, if necessary, of the judgment also, before the lapse of the period of limitation for the appeal which he intends to file, whatever that period may be ..... It appears to me upon general principles that it would be defeating the object of limitation to allow the would-be appellant to sleep over his right of appeal for more than the limitation period, and then by the accidental or unavoidable delay in the decree being prepared, to claim extension of the period of limitation for appealing from a decree for obtaining a copy of which he had not taken even the first step, by filing an application therefor. This construction is in my opinion supported by the words of para. 2 of Section 12, Limitation Act, itself. The words referring to exclusion are "the time reqisite for obtaining a copy of the decree." The words "requisite" and "obtaining" as they occur in the context seem to me to assume that some definite step ancillary to the "obtaining, that is, acquisition, is not only intended" to be taken but has already been taken. The first step for "obtaining" must be to take some step towards the obtainment and the act of "obtaining" cannot be said to have even commenced before such step. Taking it to be a sound rule of interpretation to interpret the words of a statute in their ordinary and usual sense, unless the contrary is shown, I have consulted Webster's English Dictionary, and it explains the word "obtain" to mean "to get hold of by effort; to gain possession of; to acquire," as the ordinary sense of the word. In this sense I interpret the word "obtaining" as it occurs in para. 2 of Section 12, Limitation Act, and hold that, "the time requisite for obtaining a copy of the decree" cannot refer to any period antecedent to the appellant's asking for a copy by the usual mode of applying therefor, or to any period subsequent to its being ready

> for delivery. If at the time when the application for a copy is made, the decree is not ready, he will of course be entitled to the allowance of such portion of time during which the decree remains unsigned, along with the time which may be occupied in preparing the copy for delivery; the reason being obvious that the act of obtaining has already commenced and the delay in such a case could hot be referred to any omission or neglect on his part. But when he has made no application to obtain a copy and the decree remains unsigned for a portion of, or the whole period of limitation, he cannot claim the benefit of a matter which in no sense and to no extent frustrated or retarded any endeavour on his part to obtain a copy of the decree, the endeavour itself not having yet commenced."

The learned Judge pointed out that there might be cases in which delay in applying for a copy, or in receiving it after it was ready for delivery, was due to wholly unavoidable causes beyond the control of the litigant, but that delay being antecedent to the application, and subsequent to the time when the copy was ready for delivery, could not be called "time requisite for obtaining a copy" and that would be a matter for consideration under Section 5, Limitation Act. Dealing with the reasoning in Bani Madhub Mitter's case, (13 Cal. 104 F. B.) that it was "unfair" to compute the period of limitation from the date of the judgment when the decree was not ready the learned Judge observed "that the right of appeal is the creation of statute law ; that the right so conferred is subject to the restrictions and qualifications imposed by the statute-law itself and that those in whose favour the right is created are necessarily expected to know that among those restrictions is the period of limitation which the law allows for the exercise of the right. . ."

12. The two cases cited above were decided by the High Court in the years 1889 and 1890 and ever since then they have been uniformly followed and their authority has not been doubted and they must, therefore, be deemed to have settled the law so far as this province is concerned. The appellants are, therefore, expected to know that the time previous to the making of an application has not to be excluded in computing the period of limitation and they must, therefore, file an application for copy as soon as they can and they have no excuse for delaying merely because the decree has not been signed.

13. Learned counsel for the appellants have, however, urged that the view of this Court is no longer good law in view of the decisions of the Judicial Committee of the Privy Council in Pramatha Nath v. W.A. Lee, 49 I. A. 307: (A. I. R. (9) 1922 P. C. 352) and J.N. Surty v. T.S. Chettyar Firm, 55 I. A. 161: (A.I.R. (15) 1928 P. C. 103). If this argument is correct then we are bound by those decisions and it will not be necessary to examine this matter further.

14. In J.N. Surty v. T.S. Chettyar firm, 55 I. A. 161 : (A.I.R. (15) 1928 P. C. 103) the question was whether an appeal from a decree of the Rangoon High Court in its original jurisdiction dated 8-1-1925 was barred by limitation. From the statement of facts given by the reporter it appears that on the same date on which the judgment was delivered i.e. 8-1-1925, an application was filed for copies of both the judgment and the decree; on 25-3-1925, copy of the judgment was ready for delivery, but copy of the decree was not ready until 27-4-1925, when it was obtained on payment of an urgent fee. The time taken in obtaining a copy of the decree was not given credit for as the rules

of the original side of the Rangoon High Court made it unnecessary to file a copy of the decree and it was, therefore, urged that the time occupied in obtaining it could not be regarded as "requisite" within the meaning of Section 12, Sub-section (2), Limitation Act. Under Article 151 of Schedule l, Limitation Act, the period of limitation for an appeal from a decree or order of any of the High Courts of Judicature at Fort William, Madras, Bombay, Lahore and Rangoon in the exercise of its original jurisdiction is twenty days from the date of the decree or order. The point on behalf of the respondent was that Section 12, Limitation Act, applied only to cases where the Code of Civil Procedure required that the memorandum of appeal should be accompanied by copies of the judgment and decree, and as, under the rules of the High Court of Rangoon, which could modify the provisions of the Code of Civil Procedure, it was not necessary that the memorandum of appeal should be accompanied by copies of the judgment and decree, the period of twenty days was unqualified. Dealing with this argument their Lordships while examining the language of Section 12 pointed out that it made no reference to the Code of Civil Procedure or to any other Act, nor did it give any reason why the time would be extended but simply enacts it as a positive direction. Dealing further with the observation of the High Court that the elimination of the requirement to obtain copies of the documents was part of an effort to combat the dilatoriness of some Indian Practitioners, their Lordships of the Judicial Committee observed that they would be unwilling to discourage any such effort but the High Courts could be strict in applying the provisions of exclusion and where the pleader or counsel for the appellant was not able to show that no part of the delay beyond the prescribed period was due to his default his client should not be entitled to get credit for that period. It was in that connection that their Lordships pointed out that the word "requisite" was a strong word, it meant something more than the word "required" and the proper meaning was "properly required." So far as I can see, that case has no bearing on the point for decision before us, as the application for copy of the decree was filed on the day the judgment was delivered.

15. Pramatha Nath v. W.A. Lee, 49 I. A. 307 : (A. I. r. (9) 1922 P. C. 352) was also a case in which the question of interpretation of Section 12, Limitation Act, arose in an appeal from an order made by a learned Single Judge in the exercise of the original jurisdiction of the High Court. In that case an ex parte decree was passed in favour of the plaintiff on 14-2-1918. On 23-3-1918, on the application of the defendant it was ordered that on his furnishing security for Rs. 27,000/- to the satisfaction of the Registrar en or before 10-4-1918, and paying certain costs the decree would be set aside and the suit restored for hearing. The time was subsequently extended but the appellant failed to satisfy the Registrar that the security offered by him was sufficient. On 1-7-1918, the appellant applied to the High Court for an order directing the Registrar to accept Rs. 27,000/- as security from him. This application was dismissed on 26-7-1918. It is against this order that an appeal was filed on 13-8-1918, leave being granted to him to file it without a copy of that order "as required by the rules of the High Court" but subject to any objection. Chapter 32, Rule 3 of the Rules of the Original Side of the Calcutta High Court is as follows :

> "The memorandum shall be accompanied by a copy of the decree or order appealed from; it need not be accompanied by a copy of the judgment, but the judgment shall be filed before the day fixed for the hearing, and printed in the paper book."

Rule 27 of Chap. 16 of the Original Side Rules of the Calcutta High Court is in these terms :

> "No decree or order shall be drawn up until applied for by a party. The application therefor shall be made by the requisition in writing of the party in whose favour the decree or on whose application the order was made, or, in default of his applying within four days from the date of the decree or order, by any party within one month thereafter.
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> In case any decree or order is not applied for within the last mentioned time, the Registrar may decline to draw up the same without the leave of the Court or a Judge."

Rules 23 and 24 of the same Chapter are as follows:

> "23. Every order made by the Registrar or Master, shall, upon application under Rule 27, be drawn up in the office of the Registrar, and be signed by the officer making the same: Provided that if by reason of the absence of the officer who made the order or from other cause it cannot be signed by him, it may, in a case of urgency, be signed by the other of such officers.
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> 24. Every order after being signed shall be sealed and filed forthwith."

The plaintiff applied on 6th August to have the order drawn up, the above order was served on the appellant on 7th August, approved by him on 16th August signed by the Master on 28th August and filed on 3rd September. The defendant did not make an application for a copy of the order until 9th September. The period of twenty days for appeal had expired on 15-8-1918. Reliance was placed on Section 12, Sub-section (2), Limitation Act, and it was urged that in computing the time the time requisite for obtaining a copy of the decree should be excluded. It was urged that the time requisite is the time, which, in the circumstances of the case, is actually occupied in obtaining a copy of the decree. Their Lordships again laid stress on the word "requisite" and held that the appellant had failed to give any satisfactory explanation for the periods between 30th July, the date on which the appellant could have applied for the preparation of the order, and 6th August, the date when the plaintiff made the application, and again between 7th August and 16th August, the time that the defendant took to approve the draft and which period would not have elapsed if he had acted with reasonable promptitude. It was held that the appellant was not entitled to the exclusion of the periods mentioned above. The remarks of their Lordships must be read as confined to cases of the same nature as the case before them : see Punjab Co-operative Bank Ltd. v. Commissioner of Income-tax, Lahore, 67 I. A. 464 : (A.I.R. (27) 1940 P. C. 230). It cannot, therefore, be said that their Lord. ships' view is necessarily contrary to the view expressed by this Court in Bechi v. Ahsan-Ullah Khan, 12 ALL. 461 : (1890 A. W. N. 149 F. B.) The decision in Bani Madhub Mitter v. Matungini Dassi, (13 Cal. 104 F. B.) was cited as laying down the proposition that for determining what is the time requisite the Court is bound in all cases to look at the 'time that has elapsed in obtaining the copy of the order and the negligence of the appellant which had caused delay between 30th July and 6th August and between 7th August and 16th August was not to be taken into account. Their Lordships pointed out that in Bani Madhub Mitter's case, (13 Cal. 104 F.B.) it was impossible for anybody to suggest that the time taken between the pronouncement of the judgment and the signing of the decree was an unreasonable time. In the result their Lordships dismissed the appeal. It may

be urged that in case the time requisite for ' obtaining a copy can only begin to run from the date of the application, it was not necessary for their Lordships to examine the conduct of the applicant between the dates 30th July and 6th August and between 7th August and 16th August. That may be so, but the mere fact that the appeal was dismissed on one ground when it could have been dismissed also on another ground does not mean that their Lordships necessarily intended to hold against the validity of the other ground. Moreover, where a party has to apply for the preparation of the decree before a decree would be prepared, time taken in getting the decree prepared and then getting a copy thereof may be considered as time requisite for obtaining a copy; but where the parties are not required to do anything I do not see how it can be said that the period before the application for copy was made could be time required for "obtaining" the copy, the appellant not having made any move at all towards that end.

16. It appears to me there is a clear distinction between a case as on the Original Side where it is the duty of the parties to apply for preparation of the decree or formal order before such decree or formal order is prepared, sealed and filed and a case where a decree or formal order has to be automatically prepared and the parties are not required to move in that matter. In the former case where no party has got the decree prepared and it has not been sealed and filed, they cannot obviously apply for a copy thereof and probably no application for copy of a document which is non-existent would be entertained. Similar considerations do not apply to a case where a decree or formal order has to be prepared in the ordinary course of things and an application for copy thereof can be filed and the copy issued as soon as it is ready.

17. An argument that is commonly advanced is, why should the Courts insist on an application being filed for the copy of a decree when the copy cannot be issued as the decree is not ready and has not been signed. If the applicant can apply for a copy and there is no rule or law preventing him from doing so, I see no reason why it should not be insisted on that he should file the application for a copy of the decree if he wants that period to be excluded from the period of limitation fixed in Schedule l to the Limitation Act. It is well known that after a judgment is dictated in Court it takes a little time to have it typed and the Judge signs the judgment only after he has finally revised it. The same argument can be advanced about a copy of the judgment on the ground that the Judge not having signed the judgment no copy of the judgment could have been issued by the office even if an application for copy had been filed. Similar arguments can be advanced in other cases, e.g., if the presiding officer of a Court is not present it can be urged that the plaintiff should not be compelled to file a suit when there is no one to admit it on that date even if the period of limitation is expiring. If there is no rule or law which prevents an appellant from making an application for copy of a decree on the ground that the decree is not ready, there seems to be no good reason why the appellant should wait and not file his application for issue of a copy till the decree is ready and is signed by the presiding officer.

18. The law of limitation must be certain. Whether it be deemed to be a statute of repose as observed by Mahmood J. in the case of Mangu Lal v. Kandhai Lal, 8 ALL. 475 : (1886 A. W. N. 233) or it is a law which takes away the legal rights by lapse of time, it must, as far as possible, lay down clear and definite rules. The date from which the period of limitation should run and the period fixed must be clearly prescribed. We know the date on which the judgment is pronounced. The judgment or order

has to be pronounced in open Court and, if that is the date from which limitation has to run, the litigant public can have no doubt about that date, and that is the date which the decree under the provisions of Order 20, Rule 5, Civil P. C., must bear. The preparation of the decree in this Province is ministerial act and, after the decree is drawn up and the objections of the parties are disposed of, the decree is signed by the Judge in his chambers at his own convenience. No notice of the date, on which the decree is signed by the Judge in the lower Courts, or by one of the Registrars in the High Court, is given to the parties. As a matter of fact before Order 20, Rule 21, Civil P. C., was amended by this Court and Sub-rule (5) added, which provided for the Judge giving the date on which the decree was signed, the Judge was not even called upon to mention that date. It is very difficult to accept that limitation should run from an uncertain date, of which no notice is given to the parties, and of which they might not have knowledge for several days thereafter, and which date it was not necessary for the Judge to have mentioned till the rule was amended. I have already said that in this Province ever since 1888, if not even earlier, it has been well known that the only period that would be deducted under Section 12 is the period between the date of the application for copy and the date of the notice of the copy being ready. All those, therefore, who wish to avail themselves of the period, can file an application for copy and, if there is delay in the preparation of the decree, it will not affect their rights. There is, therefore, no ground to change the view of this Court on the reason of any hardship to The litigant public. There is no reason why the appellant should wait to apply for a copy of the decree till the decree is ready and has been signed. By changing the practice and following the view of some of the other Courts we shall be replacing a definite and clear rule, which makes it easy to ascertain the period, for a rule which may lead to all kinds of uncertainties. It is true that a litigant can even in this Province delay the preparation of a decree. He can file frivolous objections or delay in supplying the requisite stamp on which a partition decree has to be engrossed or delay giving information necessary for the preparation of the decree, e.g., where costs are to be paid and received in accordance with success and failure and the items of property have not been separately valued in the plaint. It is true that even in such cases it is possible to put in an application for a copy and claim the whole of the period as the period requisite and the conduct of the appellant cannot be taken into account. But that, to my mind, is not sufficient reason for changing a well established view. I have no hesitation in following the observation of Mahmood J. in Bechi v. Ahsan Ullah Khan, (12 ALL. 461 : 1890 A. W. N. 149 F.B.) that the words "requisite" and "obtaining" mean that some definite step should be taken by the applicant himself to wards the attainment of the copy and it cannot be said that the time was required for obtaining a copy if the appellant has not even applied for a copy thereof. I have already said that the appellant is not required to wait till the decree is ready before he can file his application for a copy.

19. Another difficulty might arise when the application for copy has been made some time after the date on which the decree is ready. Should in such a case the appellant be given credit for the period from the date of the judgment to the date the decree is signed and then after leaving a gap for the period during which there was no application for copy, be given credit for another period from the date of the application to the date when the copy is ready. This would lead to this anomalous result that the requisite period for obtaining the copy would have to be divided into two parts. If there is any rule or law debarring a person from making an application for a copy on the ground that the decree is not ready, it may be possible to hold that that period was also 'requisite.' But where the delay in signing the decree does not delay the applicant in applying for a copy of the decree then I do

not see how the applicant can get the benefit of that period under Section 12, Limitation Act, without making the application.

20. In the view that I have taken it is not necessary for me to discuss at any great length the views of the other High Courts, but that there is considerable divergence of opinion admits of no doubt. The case of Bani Madhub v. Mutungini Dassi, 13 Cal. 104 (F. B.) has already been discussed earlier. That case was followed in the Secretary of State v. Parijat Debee, 59 Cal. 1215 : (A. I. R. (19) 1932 Cal. 331 F. B.) by another Full Bench of the same High Court where, however, the question was whether in the case of an appeal from the Original Side the time requisite for obtaining a copy of the decree or order does not begin until an application for copy has been made. The learned Judges relied on the observations of their Lordships of the Judicial Committee in the case of J.N. Surty v. T.S. Chettyar Firm, 55 I. A. 161 : (A. I. R. (15) 1928 P. C. 103) and the case of Bani Madhub, 13 Cal. 104 (F. B.) was followed.

21. In Harish Chandra v. Chandpur Co. Ltd., 39 Cal. 766 : (15 I. C. 59) however, Bechi v. Ahsan Ullah Khan, 12 ALL. 461 : (1890 A. W. N. 149 F. B.) was followed and also in the case of Nibaran Chandra v. Martin and Co., A. I. R. (7) 1920 Cal. 304 : (58 I. C. 408).

22. In the Patna High Court in the case of Ram Asray Singh v. Sheonandan Singh, A. I. R. (3) 1916 Pat. 267 : (l Pat. L. J. 573 F. B.) Bani Madhub's case, (13 Cal. 104 F. B.) was followed. The Court, however, changed its view after five years and in Jyotindranath Sarkar v. Lodna Colliery Co. Ltd., A. I. R. (8) 1921 Pat. 175 : (6 Pat. L. J. 350 F. B.) the view of this Court in Bechi v. Ahsan Ullah Khan, 12 ALL. 461 : (1890 A. W. N. 149 F. B.) was accepted. Fifteen years later in Gabriel Christian v. Chandra Mohan, 15 Pat. 284 : (A. I. R. (28) 1936 Pat. 45 F. B.) it was thought that the decision of the Judicial Committee in J.N. Surty v. T.S. Chettyar Firm, 55 I. A. 161 : (A. I. R. (15) 1928 P. C. 103) had approved of the decision of the Calcutta High Court in Bani Madhub's case, 13 Cal. 104 (F. B.) and the Full Bench, therefore, accepted the law laid down in Ram Asray Singh v. Sheonandan Singh, A. I. R. (3) 1916 Pat. 267 : (l Pat. L. J. 573 F. B.) as the correct law. There was no fresh examination of the arguments as the learned Judges were of the opinion that the question had been settled by the decision of their Lordships of the Judicial Committee in J.N. Surty v. T.S. Chettyar Firm, 55 I. A. 161 : (A. I. R. (15) 1928 P. C. 103).

23. In Murlidhar v. Motilal, I. L. R. (1937) Bom. 443 : (A. I. R. (24) 1937 Bom. 162 F. B.) the point for consideration was slightly different. That was also a case from the Original Side of the Bombay High Court and the period of limitation for filing an appeal was twenty days, and the question was whether the time taken in obtaining a copy of the decree could be excluded when the application for the copy had been made after the expiry of twenty days. The learned Chief Justice rightly pointed out that the Court could not impose upon the statutory right of an appellant a restriction not warranted by the Act that no time should be allowed for obtaining a copy of the decree unless such copy was applied for within twenty days from the date of the decree. The usual method of computation in this Court is to calculate the total period from the date of the judgment to the date when the appeal was filed, excluding the dates on which the Court might have been closed immediately before the date of the filing of the appeal, and deduct therefrom the period fixed in Col. 2 in the appropriate article of Schedule l to the Limitation Act, and also the time taken in obtaining a

copy of the judgment and a copy of decree adding the same but excluding such period as might overlap, and then decide whether the appeal is or is not within time. If calculated in that way the appeal is within time, then it does not matter whether the application for a copy of the decree was filed after expiry of the period mentioned in Col. 2 of Schedule 1. There are observations in the judgment of the learned Chief Justice and the other learned Judges to the effect that the decision of this Court in Bechi v. Ahsan Ullah Khan, 12 ALL. 461 : (1890 A. W. N. 149 F. B.) was no longer good law in view of the decision of their Lordships of the Judicial Committee in Pramatha Nath v. W.A. Lee, 49 I. A. 307: (A. I. R. (9) 1922 P. C. 352). But the point for consideration, as I have said before, was different from the point that has arisen before us.

24. How the acceptance of this rule would lead to greater uncertainty in the calculation of the period of limitation is illustrated by the decision of the Bombay High Court in Bhausaheb Jamburao v. Sonabai, A. I. R. (33) 1946 Bom. 437 : (I. L. R. (1946) Bom. 431) that a reasonable time should be given to an appellant to apply for copies and that time should also be deemed to be "the period requisite" under Section 12. It is needless to point out that the concept of a reasonable period like the concept of a reasonable man is one of those discoveries of Courts of law which can never be subjected to any definite rule or measure and might vary from Judge to Judge and Court to Court.

25. Reference need be given only to the last decision cited to us of the Lahore High Court in Abdul Salam v. Abdul Khaliq, A. I. R. (32) 1945 Lah. 233: (47 P. L. R. 193) where the learned Judges held that under Order 20, Rule 7, Civil P. C., the date of the decree was the date of the judgment and under Article 156, Limitation Act, limitation must, therefore, run for an appeal from the date of the judgment even though the decree was prepared and signed on a later date. Section 12, Limitation Act, also came up for consideration and there was also an application under Section 5, Limitation Act, to condone the delay as in the case of Pramatha Nath v. W.A. Lee, 49 I. A. 307 : (A. I. R. (9) 1922 P. C. 352) before their Lordships of the Judicial Committee. The learned Judges held that as the appellant had been negligent he could not claim the benefit of the period between the date of the judgment and the date when the decree was prepared.

26. In Umda v. Rupchand, A. I. R. (14) 1927 Nag. 1 : (98 I. C. 1057 F. B.), a Pull Bench of the Judicial Commissioners' Court held that an applicant was not entitled to claim the deduction of the period between the delivery of the judgment and signing of the decree when his application for a copy of the decree had not been filed until after the signing of the decree. The learned Judges remarked that if the delay in signing the decree actually prevented the applicant from obtaining a copy of it, he had only to apply for copy of the decree before it was signed and an allowance would automatically be made under Section 12, Limitation Act, for the period during which the decree remained unsigned.

27. The same view was taken in Mukunda RamKrishna v. Bisansa Sakharamsa, A. I. R. (20) 1933 Nag. 125 : (29 N. L. R. 220). It was pointed out that in the case of Pramatha Nath v. W.A. Lee, 49 I. A. 307 : (A. I. R. (9) 1922 P. C. 352), the Privy Council had not to consider the question whether the decision in Bani Madhub v. Matungini Dassi, (13 Cal. 104 F. B.) would apply to cases where the appellant was not responsible for the delay in signing the decree.

28. The view in the Chief Court at Lucknow has not been consistent. In Faqir Bux v. Bileshar, 6 Luck. 187 : (A. I. R. (17) 1930 Oudh 369), the Allahabad view was followed and it was held that the period intervening between the date of the judgment and the date of the signing of the decree could not be regarded as "time requisite for obtaining a copy of the decree" within the meaning of Section 12, Clause (2), Limitation Act.

29. The same view was taken in Gokul Prasad v. Kunwar Bahadur, 10 Luck. 250 : (A. I. R. (22) 1935 Oudh 30) and it was pointed out that the time requisite for obtaining a copy does not begin to run until the appellant has done something and an application for a copy has been made by him.

30. The Chief Court, however, changed its view in Jadubir Singh v. Sheo Naresh Singh, A.I.R. (31) 1944 Oudh 154 : (19 Luck. 456) on the ground that the decision of the Privy Council in Pramatha Nath Soy v. W.A. Lee, (49 I. A. 307 : A. I. R. (9) 1922 P. C. 352) had approved of the principle laid down in Bani Madhub's case (13 Cal. 104 F. B.).

31. No decision of the Madras High Court was cited to us.

32. It appears to me, therefore, that most of the other Courts changed their view on the ground that the case of Pramatha Nath Roy, (49 I. A. 307 : A. I. R. (9) 1922 P. C. 352) must be deemed to have approved of the decision of the Calcutta High Court in Bani Madhub Mitter's case (13 Cal. 104 F. B.). I have already discussed these cases and have expressed my opinion that the Privy Council decisions cannot be held to have overruled the case of Bechi v. Ahsan Ullah Khan (12 ALL. 461: 1890 A. W. N. 149 F.B.).

33. In my view, therefore, the appellants were not entitled to exclude any period, prior to the date when they applied for a copy of the decree, on the ground that it was a period requisite for obtaining a copy under Section 12, Limitation Act.

Wall Ullah, J.

34. I agree with the opinion of the learned Chief Justice, Wanchoo, J.

35. I agree with the learned Chief Justice.

Seth, J.

36. After the elaborate judgments of my Lord the Chief Justice and my learned brother Agarwala J. who have arrived at opposite conclusions, there hardly remains anything new which may be said in support of one view or the other, except to express concurrence with one of them and to indicate briefly the reasons for that concurrence.

37. I agree with the conclusions reached by any Lord the Chief Justice for the following reasons :

38. (l) The Code of Civil Procedure (hereinafter referred to as the 'Code') and the Limitation Act (hereinafter referred to as the 'Act') were both enacted by the same Legislature, and although both the statutes were enforced on the same day, 1-1-1909, the Code was passed a little earlier than the Act. So that when the starting point of limitation for appeals and applications for leave to appeal under the Code was fixed (Articles 152, 156 and 179 of the Act), the Legislature was well,aware that it had very recently provided in the Code (Order 20, Rule 7 of the Code) that, "the decree shall bear date the day on which the judgment was pronounced." If in spite of this knowledge it deliberately chose to fix the date of the decree appealed from as the starting point of limitation in such cases, it is manifest that it was specifically intended that limitation should begin to run from the day on which the judgment is pronounced and that its running should not be skept postponed upto the day on which the decree is signed.

39. There appears to be no reason to consider that a contrary intention was entertained when provision was being made in Section 12 (2) of the Act for excluding the time requisite for obtaining a copy of the decree or a copy of the judgment in computing the period of limitation. In view of this manifest intention of the Legislature I do not find it possible to hold that the period during which a decree remains unsigned and which is not covered by the period during which an application for a copy of the decree remains pending is also a period requisite for obtaining the copy of the decree within the meaning of that expression in Section 12 (2) of the Act. Such a construction of the section would be opposed to the manifest intention of the Legislature and would result in defeating it, for whether the period during which a decree remains unsigned is excluded from the computation of the period of limitation or whether limitation is counted from the day on which the decree is signed and not from the day on which the judgment is pronounced, the result is the same, namely, that limitation is reckoned from the day on which the decree is signed and not from the date of the decree, which, according to Order 20, Rule 7 of the Code, means the day on which the judgment is pronounced. If it was intended that limitation should run from the date on which the decree is signed, nothing could be simpler and easier for the Legislature than to have said, "the day on which the decree appealed from is signed", instead of saying, "the date of the decree appealed from."

40. It is said that the result foreshadowed in the preceding para need not necessarily follow in every case, for in those cases where the signing of the decree has been delayed on account of the appellant's own dilatoriness, it would be possible to hold that the whole of the time during which the decree has remained unsigned cannot be excluded in computing limitation as 'time requisite for obtaining a copy of the decree'. The mere fact that in some possible cases the appellant may not be entitled to the exclusion of the entire period during which the decree remains unsigned, does not in any way affect the force of the objection that as a general rule limitation would be reckoned from the date on which the decree is signed and not from the date of the judgment. Moreover, even in such cases if the interpretation put by my learned brother Agarwala J., is accepted, the limitation will not begin to run from the date of the judgment but will run from some uncertain date, because it will be open to the appellant to claim that some period at least namely the period during which the decree would have remained unsigned even if there had been no dilatoriness on his part, should be excluded. The result that will follow in such cases will be still worse, for in these cases limitation will have to be computed neither from the date of the judgment nor from the date on which the decree is signed but from some uncertain date.

41. (2) The period which Section 12 (2) of the Act excludes is "the time requisite for obtaining a copy of the decree", which means that the period to be excluded must satisfy two conditions, (i) that it should be occupied in obtaining a copy of the decree, and (ii) that it should be requisite for that purpose. Any period of time occupied in an activity having no reference to the obtaining of the copy would not satisfy the first condition and any period of time spent in obtaining the copy beyond what is requisite for that purpose would fail to satisfy the second condition. There is no reason to suppose that any greater emphasis was intended to be laid on one condition rather than the other. That being the position, it is futile to pursue the enquiry whether the Legislature intended to lay greater emphasis on 'requisite' or on 'obtaining' in the expression, "the time requisite for obtaining a copy of the decree."

42. I fail to understand how any period which precedes the making of an application for obtaining a copy of the decree may be regarded to be a part of the period requisite for obtaining such copy. I have carefully considered the judgment of my learned brother, Agarwala J. and the other cases cited at the bar. But I have not been able to discover any satisfactory answer to the reasoning contained in the following observations made by Mahmood J. in Bechi v. Ahsan-ullah Khan, 12 ALL. 461 : (1890 A. W. N. 149 F.B.) :

> "The words 'requisite' and 'obtaining' as they occur in the context seem to me to assume that some definite step ancillary to the 'obtaining,' that is, acquisition, is not only intended to be taken but has already been taken. The first step for 'obtaining' must be to take some step towards the obtainment and the act of 'obtaining' cannot be said to have even commenced before such step..... If at the time when the application for a copy is made, the decree is not ready, he will, of course, be entitled to the allowance of such period of time during which the decree remained unsigned, along with the time which may be occupied in preparing the copy for delivery; the reason being obvious that the act o£ obtaining has already commenced and the delay in such a case could not be referred to any omission or neglect on his part. But when he has made no application to obtain a copy and the decree remains unsigned for a portion of, or the whole period of, limitation, he cannot claim the benefit of a matter which in no sense and to no extent frustrated or retarded any endeavour on his part to obtain a copy of the decree, the endeavour itself not having yet commenced."

or to the following observations of Edge C. J., in Parbati v. Bhola, 12 ALL. 79 : (1890 A.W.N. 25) :

> "In my opinion, applying Section 12, Limitation Act, to such a case, allowance should be made for the time between the date when a judgment was pronounced and the date when the decree was signed, if the delay in signing the decree delayed the applicant in obtaining a copy of the decree, and not otherwise. In such a case as that it would clearly be, within the meaning of Section 12, time which was requisite for obtaining a copy of the decree, because a copy of the decree could not be obtained until the decree was signed by the Judge. But that is not the case here. Here no application was made until the 15th April; so that in no sense was the applicant delayed in obtaining a copy of the decree by the fact that the decree was not signed by

the Judge on the date the judgment was pronounced, but was signed on the 1st April."

43. (3) As observed by my learned brother Agarwala J. before Pramatha Nath Roy v. W.A. Lee, 49 I. A. 307 : (A. I. R. (9) 1922 P. C. 352) and J.N. Surty v. T.S. Chettyar Firm, 6 Rang. 302 : (A. I. R. (15) 1928 P. C. 103) were decided by their Lordships of the Judicial Committee, the preponderance of authority in India was in favour of the view expressed by this Court in Bechi v. Ahsan-ullah Khan., 12 ALL. 461 : (1890 A. W. N. 149 F. B.). In fact, except Bani Madhub v. Matungini Dassi, 13 Cal. 104 (F.B.), the authorities were all one way. Since the decision of the aforesaid two cases by their Lordships of the Judicial Committee, an opposite view has been taken in several cases. It has been thought in all such cases that their Lordships have approved of the view expressed in Bani Madhub's case, (13 Cal. 104 F. B.) (ubi supra) as against the view expressed in Bechi's case, (12 ALL. 461 : 1890 A. W. N. 149 F.B.). My learned brother Agarwala J. also seems to be of the same opinion.

44. It is admitted on all hands that the precise point which was decided in Bechi v. Ahsan-ullah Khan, 12 ALL. 461: (1890 A. W. N. 149 F. B.), or which awaits the decision of this Full Bench, did not arise for decision before their Lordships in either of the two cases and yet it is supposed that Bechi v. Ahsan-ullah Khan, (12 ALL. 461 : 1890 A.W.N. 149 F.B.) has, in some indirect way, been overruled by their Lordships of the Judicial Committee. I have carefully considered both the decisions without discovering anything in them to support this conclusion.

45. The question for consideration in Pramatha Nath Roy v. W.A. Lee, 49 I. A. 307 : (A. I. R. (9) 1922 P. C. 352) was, whether the time that had elapsed on account of the dilatoriness of the appellant could or could not be regarded to be time requisite for obtaining a copy of the order. Their Lordships held that no period can be regarded as requisite under the Act which need not have elapsed if the appellant had taken reasonable and proper steps to obtain the order. Bani Madhub v. Matungini Dassi, 13 Cal. 104 F. B., was cited before their Lordships as an authority for the proposition that in determining what period is to be deducted, the time actually consumed in obtaining the decree should be considered to be the requisite time, and their Lordships said that Bani Madhub's case, (13 Cal. 104 F. B.) did not support such a sweeping proposition. I am unable to infer from this that their Lordships intendect to hold that Bani Madhub's case, (13 Cal. 104 F. B.) was correctly decided or that Bechi v. Ahsan-ullah Khan, (12 ALL. 461 : 1890 A. W. N. 149 F. B.), was not correctly decided. As their Lordships found that Bani Madhub's case, (13 Cal. 104 F. B.) did not support the contention of the appellant, they had no occasion to apply their mind to the correctness or incorrectness of that decision. I have already stated that a period which may be regarded to be "time requisite for obtaining a copy of the decree" has to fulfil two conditions. Pramatha Nath Roy v. W. A. Lee, (49 I. A. 307 : A. I. R. (9) 1922 P. c. 352) deals with the requirements of the second condition. The requirements of the first condition, with which we have to deal, were not adverted to by their Lordships.

46. Similarly, J.N. Surty v. T.S. Chettyar Firm, 6 Rang. 302: (A. I. R. (15) 1928 P.C. 103), also relates to the second condition only, and their Lordships were not called upon in this case either to apply their mind to the requirements of the first condition. In my opinion, these cases have no bearing upon the question which we have to decide in this case.

47. (4) It is pointed out that if the view expressed in Bechi v. Ahsan-ullah Khan, 12 ALL. 461 : (1890 A. W. N. 149 F. B.) is accepted to be correct, its application to appeals from cases decided on the Original Side of the Calcutta High Court will cause great hardship. I do not think that questions of hardship are very relevant in construing provisions of limitation, and I consider that such provisions should be construed strictly according to their plain grammatical meaning. It may, however, be pointed out that Order 20, Rule 7 of the Code does not apply proprio vigore to decrees on the Original Side of the Calcutta High Court or any other High Court. It may, therefore, be possible to construe the expression "the date of the decree" in the Articles relating to appeals from the decrees on the Original Side as meaning the date on which the decree is signed. If any hardship is caused by any rules made by the High Courts themselves, according to which such decrees are also to bear the date upon which the judgment is pronounced, such hardship cannot be said to be within the contemplation of the legislature.

48. For the reasons indicated above, I concur in the conclusions of my Lord the Chief Justice and hold (l) that Bechi v. Ahsan-ullah Khan, 12 ALL. 461 : (1890 A.W.N. 149 F.B.) has not been overruled by the Privy Council; (2) that Bechi v. Ahsan-ullah Khan, (12 ALL. 461 : 1890 A. W. N. 149 F. B.) (ubi supra), states the law correctly and should be followed; (3) that "the time requisite for obtaining a copy of the decree" in Section 12 (2), limitation Act does not include any period which precedes the making of an application for the copy; and (4) that in the present case, the appellants are hot entitled to the exclusion of any period prior to the date when they applied for a copy of the decree, in computing the period of limitation.

Agarwala, J.

49. The Kesar Sugar Works filed a suit against R. C. Sharma and others for the recovery of a sum of Rs. 6655-3-3. The defendants denied the plaintiff's claim and set up a counter-claim for the recovery of a sum of Rs. 24,817-8-9 from the plaintiff.

50. The trial Court dismissed the plaintiff's suit and decreed the defendants' counter-claim for the full amount claimed together with pendente lite and future interest at Rs. 6/- percent, per annum with costs. Against this decree the plaintiff filed an appeal in this Court--F. A. No. 896 of 1941--which was valued at Rs. 35000/-, while R. C. Sharma, defendant l, filed cross-objections which were valued at Rs. 8000/- only. On 21-2-1947 this Court partly allowed the appeal and decreed the plaintiff's claim for a sum of Rs. 2872-6-6 and reduced the defendants' counter claim to Rs. 7319-15-6. It dismissed the cross-objection of defendant I with the result that this Court passed a decree for Rs. 4447-9-3 in favour of defendant 1.

5l. According to the practice of this Court, a decree is prepared by the office of this Court without motion of any party. A draft decree is prepared in the first instance and notice is given to the parties to file objections, if any, to the draft, and then after hearing the objections, if any, the decree is finally prepared by the office and signed by the Deputy Registrar. According to this practice, the office of this Court prepared a draft decree and gave notice to the parties some time in the last week of April 1947. On 30-4-1947, the plaintiff appellant filed objections to the draft decree. These objections were heard by the Court on 6-10-1947 and were partly allowed and the draft decree, as

prepared by the office, was amended. The decree was ultimately signed by the Deputy Registrar on 17-10-1947. On 19-11-1947 the plaintiff applied for a copy of the decree. On 29-11-1947, the copy of the decree was made ready by the office, but it was not taken delivery of by the plaintiff till 2-12-1947. On 11-12-1947 an application for leave to appeal to His Majesty in Council was filed in this Court by the plaintiff. This is now numbered as F. C. A. No. 28 of 1947. The defendant also filed an application for leave to appeal and that application is numbered as P. C. A. No. 9 of 1947.

52. The time for applying for leave to appeal to His Majesty in Council, as provided in Article 179, Limitation Act, is 90 days from "the date of the decree". Under Order 21, Rule 7, Civil P. C., the date of the decree is the date of the judgment, which is, in the present case, 21-2-1947. Counting 90 days from 21-2-1947, the plaintiff's application for leave to appeal, which was made on 11-12-1947, was hopelessly beyond time. But the plaintiff claims to exclude the period from 21-2-47 up to 17-10-47 when the decree was finally signed by the Deputy Registrar, and the period between 19-11-1947, when the plaintiff applied for a copy of the decree, and 29-11-1947 when the copy was made ready by the office, under the provisions of Section 12 (2), Limitation Act. If we exclude these two periods of time, or even the first period of time between 21-2-47 and 17-10-47, the application for leave to appeal was within time.

53. The sole question for determination is whether the period between the 2lst February the date of the delivery of judgment, and the 17th of October, the date of the signing of the decree, can be excluded within the meaning of Section 12 (2), Limitation Act. Section 12 (2) runs as follows :

> Section 12 (2) In computing the period of limitation prescribed for an appeal, an application for leave to appeal and an application for a review of judgment, the date on which the judgment complained of was pronounced, and the time requisite for obtaining a copy of the decree, sentence or order appealed from or sought to be reviewed shall be excluded.

54. It is conceded on all hands that unless the decree has been prepared and signed, its copy cannot be made, and so the time taken in the preparation of the decree will necessarily have to elapse before its copy is obtained. But the contention is that this period of time cannot be considered to be requisite for obtaining the copy of the decree unless an application for the copy had been made before the commencement of the time. Thus, the controversy is confined within a very narrow compass and it is this : whether the time taken in the preparation of the decree can be considered to be requisite for obtaining a copy of the decree when an application for obtaining it is made after the decree has been prepared.

55. There has been a difference of opinion in the various High Courts as to the precise meaning of the phrase "time requisite for obtaining a copy of the decree." A Full Bench of five Judges of the Calcutta High Court in Bani Madhub v. Matungini Dassi, 13 Cal. 104 (F.B.) held that where a decree is not signed until a date subsequent to the date of delivery of judgment, the intermediate period should be excluded under Section 12 (2), as it is a time "requisite for obtaining a copy of the decree", even though an application for obtaining a copy of the decree was made after the decree had been signed. In that case six days had elapsed between the delivery of judgment and the signing of the

decree and an application for obtaining a copy of the decree was made some time later. The reason for the view taken by the Pull Bench was that "the fact that the decree was not in existence, that is signed by the particular Judge, and could not therefore be copied until..... six days after the date that it bears, entitles the appellant to ask us to deduct those six days."

56. The matter came up before a Full Bench of the Allahabad High Court in Parbati V. Bhola, 12 ALL. 79 : (1890 A. W. N. 25). In that case the decree was signed three days after the delivery of the judgment and an application for a copy of the decree was made some time after the signing of the decree. Sir John Edge C. J., held :

> "Applying Section 12, Limitation Act to such a case, allowance should be made for the time between the date when a judgment was pronounced and the date when the decree was signed, if the delay in signing the decree delayed the applicant in obtaining a copy of the decree, and not otherwise. In such a case as that it would clearly be within the meaning of Section 12, time which was requisite for obtaining a copy of the decree, because a copy of the decree could not be obtained until the decree was signed by the Judge."

His Lordship, however, further observed thai since no application was made till after the signing of the decree, "In no sense was the applicant delayed in obtaining a copy of the decree by the fact that the decree was not signed by the Judge on the date the judgment was pronounced, but was signed later on."

His Lordship, therefore, held that the period between the delivery of the judgment and the signing of the decree could not be excluded. The other two Judges did not express any opinion on this point.

57. The matter again came up before a larger Bench of four Judges in Bechi v. Ahsan Ullah Khan, 12 ALL. 461 : (1890 A. W. N. 149 F. B.). In that case, judgment was pronounced on 23-5-1887, but the decree was signed on the 3lst of May. An application for copies was made by the defendants on the same date. Information of the estimate of the copies was given to them on the 1st of June, but they did not comply with the estimate until the 9th of June. Copies were delivered to them on the 11th of June. It does not appear when the copies were ready for delivery, but it is presumed they were ready on the llth of June. The memorandum of appeal was presented in the lower appellate Court on the 30th of June. The period for filing the appeal to the lower Court was, under Article 152, Limitation Act of 1877, 30 days from the date of the judgment. It is obvious that if one of the two periods, namely, period between 23rd May, when the judgment was pronounced, and the 31st of May, when the decree was signed, or the period between the 1st June, when the estimate for costs of copies was intimated to the defendant, and the 9th of June when they complied with their estimate, was to be excluded, the appeal was within time.

58. It was held that none of the two periods could be excluded. The first period between the 23rd May and 3lst May could not be excluded because no application had been made for obtaining a copy on 23-5-1877. The reasons given by Mahmood J. (with whom the other Judges agreed on this point) may be summarised as follows : (a) The exclusion of time between the delivery of judgment and the

signing of the decree, irrespective of the question whether an application for obtaining a copy of the decree was made or not at the commencement of this period, would have the effect of holding that the "starting period of limitation is not the date of the decree, which is the date of the judgment, but the date on which the decree was signed." (b) It would enable an applicant to apply for a copy even after the period of limitation had expired before the application for copy was made. (c) The words "requisite" and "obtaining" implied that some definite step ancillary to the obtaining, that is, acquisition, was not only intended to be taken, but had already been taken, and therefore no period could be excluded unless an application for copy had been made.

59. As regards the second period between the date when the estimate for costs for preparation of copies was intimated to the parties and the date on which the parties complied with the estimate, there was a slight difference of opinion. According to Mahmood J., the exclusion of this time would depend upon the circumstances of each case, and if "the delay in payment of charges was due to causes beyond the control of the litigant", it will be considered to be time requisite and will be excluded, otherwise, it will not be excluded. Sir John Edge C. J., Brodhurst and Young JJ. were, however, of opinion that this period of time cannot be excluded from computation in any case.

60. In Harish Chandra v. Chandpur Co., Ltd., 39 Cal. 766 : (15 I. C. 59), a Bench of the Calcutta High Court did not apply its previous Full Bench case of Bani Hadhub Hitter, 13 Cal. 104 F. B., in a case in which the question was whether an application for leave to appeal to His Majesty in Council was within time, and the date of the signing of the decree did not appear from the decree itself.

61. Harish Chandra Tewary's case, 39. Cal. 766 : (15 I. C. 59) was followed by another Division Bench of the Calcutta High Court in Nibaran Chandra v. Martin and Co., A. I. R. (7) 1920 Cal. 304 : (58 I. C. 408). But the Court extended the time under Section 5, Limitation Act and held the appeal to be within time.

62. A Full Bench of the Patna High Court in Ram Asrey Singh v. Sheonandun Singh, A. I. R. (3) 1916 Pat. 267 : (l Pat. L. J. 573 F. B.) followed Bani Madhub Mitter's case of the Calcutta High Court. But that High Court in Jyotindranath Sarkar v. Lodna Colliery Co., Ltd., A. I. R. (8) 1921 Pat. 175 : (6 Pat. L. J. 350 F. B.) overruled its previous Full Bench decision and followed the Allahabad view. But in the particular case before them, time was extended under Section 5, Limitation Act.

63. The Bombay High Court also followed the Allahabad view in Yamaji v. Antaji, 23 Bom. 442 and in New Piece Goods Bazaar Co. v. Jivabhai, 15 Bom. L. B. 681 : (20 I. C. 537).

64. In Narayanaswamy v. Krishnasamif A. I. R. (2) 1915 Mad. 308 : (25 I. C. 67), the Allahabad view does not seem to have been followed. In that case the judgment was pronounced on 18-4-1911. By the judgment the appellants were allowed time to pay extra court-fee up to 20-6-1911. They applied for copies of judgment and decree on 21-6-1911. But their application was rejected on the ground that the decree had not been drawn up. They seem to have again applied for copies after they had paid the extra court-fee. The Court held that the period between 18-4-1911 and 20-6-1911 must be excluded under Section 12 (2), Limitation Act. They observed, "Until they did pay, it was impossible for any action to be taken towards preparing the decrees".

65. Before 1922, therefore, the preponderance of opinion in India was in favour of the Allahabad view.

65. In 1922 and 1928 the Privy Council had to deal with Section 12 (2), Limitation Act, in two cases, namely, Pramatha Nath Roy v. W.A. Lee, 49 Cal. 999 : 49 I. A. 307 : (A. I. R. (9) 1922 P. C. 352) and J.N. Surty v. T.S. Chettyar firm, 6 Rang. 302 : A. I. R. (15) 1928 P. C. 103.

66. In Pramatha Nath Roy v. W.A. Lee, 49 Cal. 999 : (A. I. R. (9) 1922 P. C. 352), an ex parte decree was passed in the Original Side of the Calcutta High Court against the appellant on 14-2-1918. The appellant applied to have the ex varte decree set aside. On 26-7-1918 the application was finally rejected. The appellant filed an appeal in the High Court, against the refusal to set aside the ex parts decree, on 80-8-1918, beyond the period of limitation which was 20 days and without a copy of the formal order. Under the Original Side Rules of the Calcutta High Court, no decree or formal order is prepared by the. Court unless the parties move the Court for it. If the plaintiff did not move the Court for preparation of a decree or order for 4 days, the defendant could move the Court for the same. But the defendant appellant did not take any steps from 26-7-1918 onwards. Then on 6-8-1918, the plaintiff applied for preparation of the formal order. On 7-8-1918, draft of the order was prepared. It was sent to the defendant appellant. He did not return ' the same till the 16th of August. Then the draft remained with the master from the 16th of August till the 28th of August, when it was signed by the master and on 3-9-1918 it was filed by the plaintiff-respondent. The defendant made an application for a copy of the order on the 9th of September. He furnished the requisite stamp on the 10th September and a copy was supplied to him on the 12th of September.

67 Under Chap. 4, Rule 9 of the Calcutta High Court Rules, the appellant could not in the ordinary course obtain a copy of the formal order until it was filed (vide the judgment of the High Court in the above case reported in Pramatha Nath Roy v. W.A. Lee, 52 I. C. 582 : (23 C. W. N. 553)). But under Chap. 16, Rule 27 of the said Rules, it was his duty after 30-7-1918, that is, after four days of the date of the judgment, to have it drawn up.

68. The point to be noted is that the application for the copy was made long after the period of limitation had already expired and after the decree had been drawn up. The contention of the defendant appellant was that the time actually occupied in the preparation of the decree and thereafter in obtaining it should be excluded under Section 12 (2), Limitation Act. If the Allahabad view were correct, a short answer to this contention was that no time before an application for obtaining a copy of the decree was made, could be excluded. But this was not the answer given by the Calcutta High Court or by the Judicial Committee. The Judicial Committee observed :

> "Now the learned Judges in the Appeal Court have held that in determining what is the requisite time referred to in Section 12, Sub-section (2), Limitation Act, the conduct of the appellant must be considered and their Lordships think that in so determining they have rightly regarded the statutory provision. In their Lordships' opinion, no period can be regarded as requisite under the Act, which need not have elapsed if the appellant had taken reasonable and proper steps to obtain a copy of the decree or order. In the present case he took none, and the periods between July 30

> and August 6, (7 days), arid again between August 7 and August 16, (9 days), which were within the appellant's control, are sufficiently great to prevent the appellant saying that the time that did elapse must have elapsed even if he had acted with reasonable promptitude."

It was then urged before their Lordships that the practice undeviatingly followed by the Courts in Calcutta was that in determining what is the time requisite which may be deducted, one is, in all cases, to look at the time that has actually elapsed in obtaining the order; and in support of this argument reference was made to the Fall Bench decision in Bani Madhub Mitter's case, I. L. R. 13 Cal. 104 (F. B.). As regards this argument their Lordships observed:

> "They are unable to see how this decision, Bani Madhub Mitter's case (13 Cal. 104 F. B.), can have been so misunderstood. In that case judgment was-pronounced on 17-7-1883, and the decree was signed on July 23, so that only six days elapsed between the pronouncing of the judgment and the signing of the decree. It would be impossible for anybody to suggest that that was an unreasonable time. Again, the application for the copy was made on August 3, and it was obtained on August 11; another eight days elapsed there for which the appellant need not be held responsible. All that that case decided was that those two periods of time, one of which was prompt and effective and the other of which the appellant might not have been able to control, ought to be deducted from the length of time between the decree and the lodging of the memorandum. It certainly does not support the proposition that in determining what period is to be deducted in any case the time actually consumed in obtaining the decree is to be regarded."

69. This case, to my mind, establishes the following propositions : (l) In determining what period is to be deducted in any case the time actually consumed in obtaining the decree is not the real test, and the time which need not have elapsed if the appellant had taken reasonable and proper steps in obtaining the copy of the decree or order cannot be regarded as requisite under the Limitation Act. (2) The time spent in the preparation of a decree which was not unreasonable and the time from the date of the application to the date on which the copy was delivered, over which the appellant could not have control, could be considered as time requisite and thus excluded.

70. I cannot believe for a moment that their Lordships were not aware of the view of the Allahabad High Court which had been followed in most of the other High Courts in India, except in the Calcutta High Court. I cannot further believe that if the view that no time elapsing before the making of the application for a copy of the decree or order could be considered as requisite, was correct, their Lordships would not have disposed of the appeal on this simple ground. The very fact that they did not do so, but proceeded to consider whether the time that had elapsed before the application for a copy of the decree was made and which had been taken in the preparation of the decree was within the control of the appellant or not, shows that such period of time would have been considered as requisite within the meaning of Section 12 (2), if it were held to be beyond the appellant's control. Indeed, in face of the Calcutta High Court Rules, under Chap. 4, Rule 9, which permitted the appellant for applying for a copy of the order after it was filed, their Lordships could

not have possibly upheld the view that before the time could be considered "requisite" an application for a copy of the order must have been made.

7l. Furthermore, from the first proposition stated above which is deducible from the decision of their Lordships, it follows that even if an application for a copy has been made the time taken from the date of the application to the date when the copy was prepared by the office need not necessarily be considered as "requisite." In such a case, it will have again to be seen whether this period of time was beyond the control of the appellant. Thus, it appears to me that from the observations of their Lordships it follows that the real test for determining the "time requisite for obtaining a copy of the decree" does not depend upon the making of an application for such a copy.

72. In J.N. Surty v. T.S. Chettyar Firm, 6 Rang. 302 : (A.I.R. (15) 1928 P.C. 103), a decree was passed on 8-1-1925. Under the Original Side Jurisdiction of the Rangoon High Court, the period of limitation for an appeal was 20 days. An application for copies both of the judgment and decree was made on the same date. On 25th March copy of judgment was ready for delivery and a copy of the decree was ready on 27th April. It was delivered on the same date. The appeal was filed on the 28th of April. According to the rules of the Rangoon High Court, it was not necessary to file a copy of the decree along with the memorandum of appeal, in appeals from orders passed in the exercise of its Original Civil Jurisdiction. The question was whether a copy of the decree not being necessary to be filed along with the appeal, time taken in procuring it could be considered as "requisite" under Section 12 (2). The Judicial Committee held that it could be so considered.

73. Then their Lordships considered the observation made in the High Court that the elimination of the requirement to obtain copies of the documents was part of an effort to combat the dilatoriness of some Indian practitioners and observed that: "no doubt there is force in the observation and their Lordships would be unwilling to discourage any such effort". "All, however, that can be done as the law stands" said their Lordships, "is for the High Courts to be strict in applying the provisions of exclusion." Then their Lordships explained the ambit of the rule contained in Section 12 (2) and observed:

> "The word 'requisite' is a strong word; it may be regarded as meaning something more than the word required. It means 'properly required', and it throws upon the pleader or counsel for the appellant the necessity of showing that no part of the delay beyond the prescribed period is due to his default.
>
> But for that time which is taken up by his opponent in drawing up the decree or by the officials of the Court in preparing and issuing the two documents, he is not responsible."

74. I do not consider that the above remarks were obiter or that they were unnecessary for the decision of the case. The point was whether time taken between the date of the judgment and the delivery of the copy of the decree could be considered to be "time requisite for obtaining the copy". Two arguments were addressed to their Lordships, (l) that the copy of the decree was not necessary to be filed and, therefore, the time taken in obtaining it could not be considered to be requisite, and

(2) that if it were held that such time could be considered to be requisite, it would encourage dilatoriness.

75. Both these points were decided by their Lordships.

76. Their Lordships divided the time 'requisite' into two portions (l) : Time taken by his opponent in drawing up the decree and (2) time taken by the officials of the Court in preparing and issuing the copies.

77. I consider that this judgment strongly indicates that nothing turns upon the mere fact whether an application for copy of the order or decree has been made before the commencement of the time, which is sought to be excluded, but that one has to see in every case, whether time taken in drawing up the decree was beyond the control of the appellant or not.

78. After these two decisions of the Privy Council, most of the High Courts in India have accepted the Calcutta view, laid down in Bani Madhub v. Matungini Dassi, 13 Cal. 104 (F.B.) as correct.

79. In Secretary of State v. Parijat Debee, 59 Cal. 1215 : (A. I. R. (19) 1932 Cal. 331 F. B.) the matter was considered by a Pull Bench of the Calcutta High Court and the earlier decision reported in Nibaran Chandra v. Martin and Co., A. I. R. (7) 1920 Cal. 304 : 58 I. C. 408) was overruled and the decision in Bani Madhub Mitter's case, (13 Cal. 104 F. B.) was followed.

80. The same view was taken in a subsequent case by Biswas J., Sudhansu Bhusan v. Majho Bibi, A.I.R. (24) 1937 Cal. 732 : (176 I. C. 361).

81. In Sarat Chandra v. Rati Kanta, A.I.R. (26) 1939 Cal. 711 : (186 I. C. 58), Sen J. expressed a similar Opinion.

82. In Gabriel Christian v. Chandra Mohan Missir, A. I. R. (23) 1936 Pat. 45 : 15 Pat. 284, a Full Bench of seven learned Judges of the Patna High Court overruled its previous Pull Bench decision in Jyotindranath 'Sarkar v. Lodna Colliery Co. Ltd., A. I. R. (8) 1921 Pat. 175 : (6 Pat. L. J. 350 F. B.) and upheld its still earlier Full Bench decision in Ram Asrey Singh v. Sheonandan Singh, A.I.R. (3) 1916 Pat. 267 : (l Pat. L. J. 573 F.B.) The learned Judges observed as follows:

> "The difference of opinion has arisen over the construction of the words in Section 12, Sub-sections (2) and (3) 'the time requisite for obtaining copy of the decree appealed from' and the choice is between two alternative constructions depending upon whether (a) the proper emphasis is upon the word 'requisite' so that the meaning is 'the time which would have been necessary in any case' or (b) whether the emphasis should be upon the word 'obtaining' with the result that the meaning is as though the words were 'the time actually employed by the appellant' and hence that no time preceding the application for copies by the appellant can be considered. In our opinion, the former of these alternatives is the correct construction and that it is correct is shown by the observations of their Lordships of the Judicial Committee in

J.N. Surty v. T.S. Chettyar Firm, 6 Rang. 302 : (A.I.R. (15) 1928 P. C. 103)."

83. A Full Bench of the Bombay High Court also considered the matter in Murlidhar v. Moti Lal, I. L. R. (1937) Bom. 443 : (A.I.R. (24) 1937 Bom. 162 F.B.). This Full Bench consisted of Sir John Beaumont C. J., now a Member of the Judicial Committee, Rangne-kar J. and Kania J., now Chief Justice of India. The decisions in Yamaji v. Antaji, 23 Bom. 442, and in New Piece Goods Bazaar Co. v. Jivabhai, is Bom. L. R. 681: (20 I. C. 537), were overruled, and the Allahabad case in Bechi v. Ahsan Ullah Khan, 12 ALL. 461 : (1890 A. W. N. 149 F.B.), was disapproved. Kania J. (as his Lordship then was) expressed the opinion:

> "In Pramatha Nath Roy v. W. A. Lee, 49 Cal. "999 : (A.I.R. (9) 1922 P. C. 352), although the question was not directly considered by the Privy Council, it appears from the judgment that their Lordships agreed with the view of the Calcutta High Court that it was open to the Court to treat the time properly spent in preparing the original decree as requisite for obtaining a copy of the decree. That argument was considered not only in respect of the facts of that case in which the application for a copy was made after the prescribed period of limitation had expired, but also in respect of the time of six days excluded in Bani Madhub's case, (13 Cal. 104 F.B.). It was held that the time spent in having the original prepared in Pramatha Nath Roy's case, (49 I. A. 307 : A. I. R. (9) 1922 P. C. 852) was due to the appellant's laches and therefore was not requisite within the meaning of the section. The six days, spent for the decree in Bani Madhitb v. Matungini Dassi, (13 Cal. 104 F.B.), even before the application for a copy was made, was considered to be properly excluded under that section. Having regard to that view it is now difficult to accept the correctness of the view taken in subsequent decisions."

Since then the Bombay High Court has consistently followed the Full Bench decision: vide Balappa Tammanna v. Dyamappa Bhusappa, A.I.R. (27) 1940 Bom. 415 : (192 I. C. 275 F.B.) and in Bhausaheb Jamburao v. Sonabai, A. I. R. (33) 1946 Bom. 437 : (I. L. R. (1946) Bom. 431).

84. A single Judge of the Oudh Chief Court in Faqir Bux v. Bileshar, 6 Luck. 187 : A.I.R. (17) 1930 Oudh 369, did not have his attention drawn to the implications of the Privy Council decision, but in later decisions the implications were fully appreciated and the view taken in the Calcutta, Patna and Bombay High Courts was adopted: vide Yusuf Ali v. Mohammad Kazim Ali Khan, A.I.R. (27) 1940 Oudh 173 : (15 Luck. 376), Kallu Mal v. Municipal Board, A.I.R. (29) 1942 Oudh 392 : (200 I. C. 608) and Jadubir Singh v. Sheo Naresh Singh, A.I.R. (31) 1944 Oudh 154 : (19 Luck. 456).

85. In Kahn Chand v. Gurdit Singh, A.I.R. (23) 1936 Lah. 976 : (168 I. C. 897), Agha HaidarJ. was of the same opinion.

86. There is nothing in Abdul Salam v. Abdnl Khaliq, A.I.R. (32) 1945 Lah. 233 : (47 P. L. R. 193) which can be said to be against the above view.

87. The matter has not come up before the Nagpur High Court. A Division Bench of the Nagpur Judicial Commissioner's Court, however, in the year 1933 refused to follow the implications of the Privy Council decisions: vide Mukunda Ramkrishna v. Bisansa, A.I.R. (20) 1933 Nag. 125 : (29 N. L. R. 220).

88. The Allahabad High Court is considering the effect of the Privy Council decisions for the first time in the present case. After the Full Bench decision in Bechi v. Ahsan Ullah Khan, 12 ALL. 461 : (1890 A. W. N. 149 F.B.) the matter was not further considered by this Court in any other reported ease.

89. It will thus be seen that the opinion in the various High Courts in India after the Privy Council decisions is overwhelmingly in favour of the Calcutta view and against the view expressed in the Allahabad Full Bench case in Bechi v. Ahsan Ullah Khan, 12 ALL. 461 : (1890 A. W. N. 149 F.B.).

90. In my judgment, the better view is the one taken by the other High Courts in India and we should overrule the decision in Bechi v. Ahsan Ullah Khan, 12 ALL. 461 : (1890 A. W. N. 149 F.B.). I say this for several reasons.

91. Firstly, let us consider the words to be interpreted. They are "time requisite for obtaining a copy of the decree or order." No doubt it is possible to take a strict view of the meaning of these words. "Obtaining a copy" implies "applying for the copy and then acquiring it." Therefore it is possible to say that "time requisite for obtaining a copy" means "time requisite" between applying for a copy and getting it.

92. It is also possible to take a more lenient view of the words. "Obtaining" refers to the final act of acquiring. It, no doubt, implies applying for the copy at some stage. But the emphasis is not on applying which word is not at all used in the section. The emphasis is upon the final act of acquiring and the query is "what is that time which must be deemed necessary for completing the final act of acquiring the copy."

93. Requisite means required by circumstances or the nature of things necessary, indispensable"--Murray's Oxford New Dictionary. "Time requisite" is not the same thing as the time "taken" or even time "required." It means time indispensably required according to the circumstances of the case.

94. Again acquisition of a copy of a decree or order can only be made after the decree or order has been prepared, and some time will necessarily be taken in preparing the copy. Therefore, "time requisite" in getting a copy of the decree or order implies time necessarily spent in preparing the decree or order and then in preparing its copy. The filing of an application for a copy before the decree is prepared does not seem to be an essential ingredient of the expression "time requisite for obtaining a copy of the decree or order." This, to my mind, is made clear by the word "for" in the expression "time requisite for obtaining a copy of the decree or order."

95. Those who take a narrower view, read the word "for" as if it was "in", though they may do so unconsciously. If the expression were "time taken in obtaining a copy," the narrower view was the only view possible. But the expression "time requisite for obtaining a copy" is not the same thing as "time taken by the appellant in obtaining a copy." The word "for" implies "for the purpose of" or "in respect of." And, therefore, time necessarily token before a copy can be issued, may legitimately be said to be "time requisite" for the purpose of acquiring a copy.

96. Again, the use of the word "requisite" (which is an adjective and not a past participle, like the word "taken") shows that it does not necessarily refer to the activity of the appellant, but that the "requisiteness" has reference rather to the circumstances of the case. 97. To my mind, therefore, the expression "time requisite for obtaining a copy of the decree or order means" the time which of necessity must expire before a copy is obtained. This time must consist of two periods--time necessarily spent in the preparation of the decree, over which the appellant had no control, and time necessarily spent in the preparation of the copy, over which, again, the appellant had no control.

98. To my mind, the view that no time would be requisite for obtaining a copy of the decree before an application had been made therefore, is too strict an interpretation and is not warranted by the language of the section.

99. Secondly, let us consider the anomalies that would arise if the stricter view is taken. Section 12 (2) applies both to Original Side decrees and orders in the Presidency towns as well as to other decrees and orders. The interpretation that is given to Section 12 (2) must act uniformly so as to cover all cases whether they arise in respect of decrees passed on the Original Sides of the presidency High Courts or by other Courts.

100. Now in the Original Side of the Calcutta High Court, and I believe in the Original Sides of the other Presidency towns as well, no decree is prepared unless a party moves for its preparation. Even after it has been prepared, no copy can be obtained unless the decree or order has been filed in Court by the party who applied for its preparation. It the rule were interpreted simply as suggesting that the time elapsing between the making of an application for a copy and the preparation of the copy by the office is to be considered as "time requisite," it may include time which has been spent on account of the dilatoriness or default of the appellant himself either (a) in applying for the drawing up of the decree or order, or (b) in taking undue time in approving a draft order, or (c) in filing it in Court.

101. On the other hand, the aforesaid interpretation may exclude time for which the appellant may not be responsible. It is well-known that sometimes copies of the formal orders are not prepared by the lower Courts. This usually happens when, according to them, the order is not appealable. When a party applies for a copy, it is sometimes rejected on the ground that no formal order has been prepared. The application for copy is rejected sometimes in other cases as well, e.g., as happened in Narayanswamy v. Krishnasami, A. I. R. (2) 1915 Mad. 308 : (25 I. C. 67), because the plaintiff had not paid the excess court-fee that he had been ordered to pay by the judgment and the decree had not been prepared for that reason.

102. What is to happen when the application is at first rejected and then it is made again after the decree or order has been prepared ? Will the period intervening between the dismissal of an application for copy and the preparation of the decree or order be considered to be requisite ? On the stricter interpretation, it cannot be so considered. But it is obvious that the position would be anomalous. No doubt it can be said that this time would be extended under Section 5, Limitation Act. But that is after all in the discretion of a Court and though the discretion is to be exercised according to judicial principles, it is nonetheless a discretionary matter and not a matter of right, whereas under Section 12 it is a matter of right. Why should the exclusion of time which the appellant is entitled to as of right under Section 12 be made to depend upon the discretion of the Court under Section 5 ?

103. Thirdly, let us consider the objections against the more liberal view.

104. (a) It is said that this view makes the running of time for filing an appeal not from the date of the decree as provided by Order 20, Rule 7, Civil P. C., but from the date on which the decree is signed. I think this objection is unfounded. As observed by the Privy Council in the case already referred to, the entire time taken between the date of the delivery of judgment and the signing of the decree is not to be excluded in all cases. It is to be excluded only if the time can be considered to be properly required. If the signing of the decree has been delayed by the dilatoriness or default of the Appellant himself, the whole of the time cannot be so excluded. This is particularly so in the Original Side of the Presidency High Courts. But even in other Courts time may be wasted because of the default of the applicant himself, for instance, in a partition decree where an applicant had to supply some stamps or to take some steps in order that a decree may be prepared, or where the appellant does not pay the extra court-fee required of him by the judgment.

105. It cannot therefore be said that the liberal view in all cases will make the running of time from the date of the signing of the decree. If it be objected that this view will in most cases have that effect, then I submit that on the stricter view as well, the same result is achieved when an application is made on the date on which the judgment is delivered.

106. (b) It is objected that the liberal view would enable an applicant to apply for a copy even after the period of limitation had expired before the application for copy was made. To this my reply is that in the objection an assumption is made that the period of limitation would be deemed to have expired even though the decree itself had not been prepared within the period of limitation. Where a decree has not been prepared within the period of limitation, the period of limitation, according to me, has not expired at all having regard to Section 12 (2) because the time properly consumed in the preparation of the decree must be excluded before it can be said that the period of limitation has expired. The objection really begs the question. But if after excluding the time properly taken in bringing into existence the decree or order no copy is applied for till the expiry of the period of limitation, then of course the appeal would be barred by time. An application for copy thereafter would be of no avail, and I agree with the view taken by Biswas J. on this point in Sudhansu Bhusan v. Majho Bibi, A. I. R. (24) 1937 Cal. 732 : (176 I. C. 361).

107. (c) It is objected that when the appellant does not apply for a copy till after the decree has been signed, he is not necessarily thwarted in making the application by reason of the delay in signing the decree, and that his reason very often may be that he wants to think over whether he would appeal or not at all. The Courts have no machinery to ascertain the thoughts of men except by their actions. If a man says he was not meditating over the question 'to file the appeal or not to file it', but was waiting for the preparation of the decree, so that he may obtain a copy thereof, it is not possible to contradict him, except perhaps by his own admission.

108. Further, every appellant has a perfect right to wait till the decree is prepared and then to make up his mind to appeal or not to appeal. It may be that the appellant is not dissatisfied with the order except in the matter , of costs. He would certainly like to see what costs have been awarded to the other side or what costs have been awarded to him. This can only be seen when the decree has been actually prepared. After looking into the decree he may give up the idea of filing an appeal considering it not worthwhile, or he may decide to file an appeal. The mere fact that a party has waited till the preparation of the decree before he finally made up his mind to file an appeal can be no reason why the time which must in fact necessarily elapse before a copy of the decree can be obtained, should not be considered as "time requisite".

109. (d) It is again objected that if an application is filed before the decree has been signed, it will expedite the preparation of the decree and, therefore, unless an application has been filed, time taken in the preparation of the decree should not be considered to be "requisite". My experience does not support the assumption in the objection. Applications for copies are made in one department and copies are prepared in another. An enquiry from the copying department whether a decree has been prepared or not does not expedite the preparation of the decree. Such considerations, to my mind, cannot in the least influence the determination of the true import of the words used in Section 12.

110. (e) It is objected that the liberal view would make it impossible for the office to report whether the appeal was beyond time and would bring in uncertainty in the calculation of time to be excluded. I respectfully demur to this proposition. I am not aware that the rules in any Court (except on the Original Side perhaps) do not require the date of the signing of the decree to be shown on the decree. So far as this Court is concerned, Order 20, Rule 21, Sub-rule (5), clearly enjoins upon the Courts to put on the decree the date on which it was signed. Before this rule was incorporated in Schedule 2 to the Civil P. C., it was to be found in the rules for Subordinate Courts framed by this Court--vide Rule 77 of the rules printed in 1894.

111. From a perusal of the judgments in the other Courts, I have found references to the rule requiring the date of the signing of the decree to be shown on the decree. If, therefore, the date of the signing of the decree can be found out from the copy of the decree filed along with the memorandum of appeal, there will be as much certainty, or, as much uncertainty in the calculation of the time as there is upon the stricter view. Assuming, however, that the date is not shown on the decree, the office can always report that the appeal appears to be beyond time and then the burden will be on the appellant to show by an affidavit how he makes out that his appeal is within time, which on the face of it is beyond time. No doubt, it would have been better if the law had provided

for a rule of thumb to find out the time requisite for obtaining a copy of the decree. Unfortunately, this is not so. Even upon the stricter view the whole of the time that elapses between the making of the application for copy and the date when the copy is made ready for delivery cannot be excluded in all cases. Even according to the Full Bench decision in Bechi's case, 12 ALL. 461 : (1890 A. W. N. 149 (F.B.)), the time taken between the date of the information about the estimate of expenses for the preparation of copies and the date of deposit of expenses is to be excluded in all cases, and yet this information is not shown on the copies so far as I am aware. 112. Again it will be conceded that even accepting the stricter view, but haying regard to the observations made in the Privy Council cases, time consumed in the preparation of the decree on account of the dilatoriness of the appellant will have to be excluded e.g. in partition cases when the appellant does not file the stamp required for the preparation of the decree for a long time, though he made the application for copy on the date of the judgment, and yet this information is not available on the copy of the decree. It, therefore, follows that an enquiry will have to be made in many a case whether the time sought to be excluded was requisite or not even upon the stricter view.

113. (f) It is said that this Court has been following consistently the course of practice for more than half a century and that it is not necessary to deviate from it now. If there were no statutory provision and a certain matter of procedure were governed by practice alone, then undoubtedly the practice would provide the rule to be followed. But where a statutory provision has been wrongly interpreted and a wrong practice has been followed, it should be set right as soon as the mistake is discovered. It was ruled in Allah Babul v. Ganga Sahai, 1947 A.L.J. 215 : (A.I.R. (13) 1947 ALL. 211 F.B.), that a practice of the Court in derogation of law cannot be recognised.

114. Fourthly, I consider that when two views about the construction of a statute on limitation are possible, the view that allows a party a right of action or appeal rather than the one that shuts him out should be adopted vide decisions in Pochya Mitay v. Emperor, 40 Cal. 239 : 16 I. C. 167 at p. 169 : (13 Cr. L. J. 599); Verikanna v. Venkatakrishnayya, 41 Mad. 18 : A. I. R. (5) 1918 Mad. 492; Seshayya Chetty v. Subbadu, 54 Mad. 445 : A.I.R. (17) 1930 Mad. 991; Datto Dudheswar v. Vithu, 20 Bom. 408 (F. B.); Lallubhai v. Naran, 6 Bom. 719 (F.B.); Anant Ram v. Inayat Ali Khan, A. I. R. (7) 1920 Lah. 447 and Asa Ram v. Darba Mal, A.I.R. (16) 1929 Lah. 513 : (121 I. C. 379).

115. Lastly, the effect of the Privy Council decisions in Pramathnath Roy's case, 49 Cal. 999 : (A.I.R. (9) 1922 P.C. 352), and J.N. Surty v. T.S. Chettyar Firm, 6 Rang. 302 : (A. I. R. (15) 1928 P. C. 103) has to be considered. To my mind, the Privy Council decisions are strong indication of the correctness of the view taken in Bani Madhub Mitter's case, 13 Cal. 104 (F.B.) and consequently the view taken by this Court in Bechi's case in 12 ALL. 461 : (1890 A. W. N. 149 F. B), must be considered to be wrong. It is true that the Privy Council did not decide the exact point under consideration, but the observations made by them are entitled to high respect and even if obiter they are binding on Courts in India vide Full Bench decision of this Court in Shrinath Sah v. Official Liquidator, 1940 A. L. J. 826 : (A. I. R. (27) 1940 ALL. 544 F. B).

116. I am therefore of opinion that (a) the "time requisite" for obtaining a copy of the decree or order within the meaning of Section 12 (2), Limitation Act, is the time necessarily required, and over which the appellant had no control, in the preparation of the decree or order appealed from, and the

time necessarily taken, and which was beyond the control of the appellant, in the preparation of a copy of the decree or order appealed from, and (b) the time necessarily required in the preparation of the decree is to be excluded, even though an application for a copy of the decree was made after the preparation of the decree. But if the application for a copy is made after the expiry of the period of limitation fixed for an appeal or an application for leave to appeal or an application for review of judgment after excluding the "requisite time" consumed in the preparation of the decree, then the application for a copy will be of no avail and the time taken in the preparation of the copy will not be excluded.

117. I would, therefore, hold that the application in F.C.A. No. 23 of 1947 was filed within time 118 By the Court. -- The decision pf the majority is that the appellants were not entitled to exclude any period, prior to the date when they applied for a copy of the decree, on the ground that it was a period requisite for obtaining a copy under Section 12, Limitation Act.