

Udayan Chinubhai vs R. C. Bali on 22 September, 1977

Equivalent citations: 1977 AIR 2319, 1978 SCR (1) 547, AIR 1977 SUPREME COURT 2319, 1977 4 SCC 309, 1977 MAH LJ 892, 1978 (1) SCR 547, 1977 REV LR 679, 1977 MPLJ 853, 1978 (1) SCWR 16, 1978 (1) RENTLR 1, 1978 (10) LAWYER 58, 1977 U J (SC) 633

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Bench: P.K. Goswami, V.R. Krishnaiyer, Syed Murtaza Fazalali

PETITIONER:

UDAYAN CHINUBHAI

Vs.

RESPONDENT:

R. C. BALI

DATE OF JUDGMENT 22/09/1977

BENCH:

GOSWAMI, P.K.

BENCH:

GOSWAMI, P.K.

KRISHNAIYER, V.R.

FAZALALI, SYED MURTAZA

CITATION:

1977 AIR 2319

1978 SCR (1) 547

1977 SCC (4) 309

ACT:

Limitation Act, 1963, Sections 5, 12, 12(2), Explanation to sec. 12-Whether the time between the date of the judgment and the date of the preparation of the decree is to be excluded for the purposes of limitation if application for certified copy is made after the decree was prepared-If there was a legal impediment against preparation of the decree on account of certain directions in the judgment whether position would be different-When a litigant requests his advocate to take all steps without any laches and if there is indifference or negligence on the part of the advocate, whether delay should be condoned.

HEADNOTE:

The respondent filed a suit for rendition of accounts against the appellant, The Trial Court delivered its judgment on 27-3-1976 and granted a final decree. The respondent was directed to make up deficiency in court fees within one month. On 14-4-1976, the appellant requested his advocate in the trial court to take necessary steps to file an appeal in the High Court. On 17-4-1976 the advocate in the Trial Court applied for a certified copy of the judgment. The deficit court fees was paid on 6-5-1976. On the same day the decree was drawn up. The advocate who filed the appeal in the High Court applied for another certified copy of the judgment and decree on 14-7-1976. The said copies were ready on 17-9-1976. The appeal was filed on 29-9-1976. If the limitation is counted from 6-5-1976 the appeal would be within period of limitation. However, if the limitation was counted from 27-3-1976, the appeal would be timebarred. The High Court on construction of s.12(2) of the Limitation Act, 1963. read with the explanation held that the limitation would commence from 27-3-1976. and therefore, the appeal was time-barred. The High Court 'held that the delay till 17-9-1976 was explained, however, since the appeal was filed on 29-9-1976, the delay of 12 days was not explained and, therefore, dismissed the appeal.

Allowing the appeal by special leave,

HELD :- (1) In the Limitation Act of 1908 there was no explanation to section 12 and there was a sharp cleavage of opinion in the High Courts with regard to the expression "the time requisite for obtaining a copy of the decree". Ultimately this Court in the case of Lala Bal Mukund held approving the view of the majority of the High Courts that the period taken in drawing up of the decree would be part of the requisite period. This Court, however, did not express any opinion on the new section 12(2) of 1963 Act read with explanation. [550 H, 553 C-E]

Jagat Dhisli Bhargava v. Jawahar Lal Bhargava & Ors. [1961] (2) SCR 918 and Lola Bal Mukand (Dead) by L.Rs v. Lajwanti and others A.I.R. 1975 SC 1089, referred to.

(2) The Court after referring to the object of the new section and the recommendation of the Law Commission held that in computing the time requisite for obtaining the copy of a decree the time that elapsed between the pronouncement of the judgment and the signing of the decree is not to be excluded if the application for copy was made after the preparation of the decree. [553 F-G]

Subhash Ganpatrao Buty and Another v. Maroti slo Krishnaji Dorlikar and Others A.I.R. 1975 Bombay 244, overruled.

Sitaram Dada Sawant and Another v. Ramit Dada Sawant, AIR 1968 Bombay 204, approved.

(3) The Court held that "shall not be excluded" does not mean "shall be included". [555 C]

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(4) The position would be different if a decree cannot be prepared in law because of noncompliance with some

directions in the judgment. It is not possible to conceive how a person may obtain a copy of a decree if that decree in view of the recitals in the judgment pronounced cannot be prepared without some further action by a party. A judgment which is unconditioned by the requirement of any action by a party stands on a different footing and in that event the date of the judgment would necessarily be the date of the decree. In such a case a party cannot take advantage of any ministerial delay in preparing the decree prior to his application for a copy i.e., to say if there is any impediment in law to prepare a decree immediately after the pronouncement of judgment, no matter, if in fact, a decree is prepared after some time lapses. It is only when there is a legal impediment to prepare a decree on account of certain direction in the judgment or for non-compliance with such directions or for other legally permissible reasons the party who is required to comply with such directions or provisions cannot rely upon the time required by him, under those circumstances, as running against his opponents. In the present case, time was given to the respondent for paying the deficit court fees. There can be no decree in existence in law until the respondent supplied the court fees. Without the existence of the decree any application for a copy of the decree would be futile. In the present case, therefore the date of the decree was when the respondent furnished the court fees as ordered. It was only when the respondent paid the court fees that it was possible to prepare the decree in terms of the judgment. In the present case the period of 90 days would count from the date when the respondent had deposited the court fees.

Even otherwise in the entire circumstances of the case disclosing sheer in difference on the part of the Trial Court advocate and no laches whatever on the part of the appellant, the court would have been inclined to condone the delay of 12 days under sec. 5 of the Limitation Act.

[557 D 558 F-H, 559 B-F]

JUDGMENT :

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 1187 of 1977.

Appeal by Special Leave from the Judgment and Order dated the 28th March, 1977 of the Delhi High Court in Regular First Appeal No. 386 of 1976.

V. M. Tarkunde, P. H. Parekh, Kailash Vasdev and Miss Manju Jetley for the Appellant.

A. B. N. Sinha, K. K. Sinha and S. K. Sinha for the Respondent.

The Judgment of the Court was delivered by GOSWAMI, J.-This appeal by special leave is directed against the judgment and order of the Delhi High Court dated March 28, 1977, in a regular first appeal. The High Court dismissed the appeal as time barred and also refused to condone the delay under section 5 of the Limitation Act, 1963.

The defendant is the appellant before us.' The plaintiff- respondent filed a suit for rendition of accounts in the court of the Commercial Sub-Judge, Delhi and he decreed the suit by his judgment dated March 27, 1976, in the following words :-

"I grant the plaintiff a final decree in the sum of Rs. 42,259.75 against the defendants with costs. The plaintiff is directed to make up deficiency in court fee within one month".

It appears that the suit was filed with a court fee of Rs. 20/- only. The plaintiff after obtaining, from the court, an extension of time supplied the deficient court fees on May 6, 1976, on which date the decree was prepared and signed.

On April 14, 1976, the appellant, who stays in Ahmedabad, requested Shri Bharatinder Singh, his Advocate in Delhi, in the trial court, to take necessary steps to file an appeal in the High Court and the said Advocate made an application for certified copies of the judgment and the decree on April 17, 1976. Later on the appellant requested Shri P. H. Parekh, Advocate, to file the appeal in the- High Court. Shri Parekh was informed by Shri Bharatinder Singh that he had made the application for certified copies in April 1976 and that he would hand over the certified copies as soon as these were received.

Since, however, for a long time the said certified copies were not received by him from Shri Bharatinder Singh, Shri Parekh filed another application for certified copies of the judgment and decree on July 14, 1976, after signing of the decree. The said copies were ready on September 17, 1976 and were received by Shri Parekh on that day. Shri Parekh prepared the Memo of appeal, got it approved from his client in Ahmedabad, purchased the court fees payable on the Memorandum of appeal on September 25, 1976, and filed the appeal in the High Court on September 29, 1976. It is stated that Shri Parekh was all along of the opinion that since the first copy had been applied for in April 1976 and since that was not ready, the appeal would be well within time and since the said certified copies would be obtained from Shri Bharatinder Singh Shri Parekh would file the said certified copies to show that the appeal was within the period of limitation. It is further stated that Shri Parekh was also of the opinion that the time for limitation would start running from May 6, 1976, since that was the date when the respondent paid the deficient court fees and the final decree was drawn up and signed. It was under

these circumstances, it was claimed before the High Court, that the appeal filed was within the period of limitation as prescribed by article 116(a) of the Schedule to the Limitation Act, 1963.

The Registry of the High Court pointed out that the appeal was time barred and the appellant, therefore, filed an application explaining all the aforesaid facts and circumstances with regard to the delay in presentation of the appeal and also contended that in fact there was no delay if the time ran from May 6, 1976.

The High Court held that the appeal was, prima facie, time barred taking the date of the decree as March 27, 1976, which was the date of the judgment and refused to condone the delay of 12 days which, according to the High Court, was not adequately explained. The High Court, however, made a significant observation taking note of the entire circumstances of the case that "all this makes out sufficient cause for condoning the delay upto that time", that is 17th September, 1976, when Shri Parekh took delivery of the certified copy. It may be mentioned here that Shri Bharatinder Singh took delivery of the certified copies on December 22, 1976, although these were ready for delivery on June 11, 1976.

The first question that arises for decision in this appeal is whether under section 12(2) of the Limitation Act, 1963, read with the Explanation, the appellant is entitled to exclude the time commencing from the date of the judgment till signing of the decree prior to his application for a copy thereof. According to the appellant the Explanation should be so read as to enable a party to obtain the benefit of the time prior to the signing of the decree in computing the period of limitation. In that case the appeal will not be barred,. says Mr. Tarkunde.

Before we proceed further, we may read section 12 with the Explanation which was for the first time introduced in the new Act in 1963 "12. (1) In computing the period of limitation for any suit, appeal or application, the day from which such period is to be reckoned, shall be excluded.

(2) In computing the period of limitation for an appeal or an application for leave to appeal or for revision or for review of a judgment, the day 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 revised or reviewed shall be excluded. (3) Where a decree or order is appealed from or sought to be revised or reviewed, or where an application is made for leave to appeal from a decree or order,, the time requisite for obtaining a copy of the judgment on which the decree or order is founded shall also be excluded.

(4) In computing the period of limitation for an application to set aside an award, the time requisite for obtaining a copy of the award shall be excluded.

Explanation :-In computing under this section the time requisite for obtaining a copy of a decree or an order, any time taken by the court to prepare the decree or order before an application for a copy thereof is made shall not be excluded".

In the old Limitation Act, 1908, the Explanation was not there and there was a sharp cleavage of opinion in the High Courts with regard to the expression "the time requisite for obtaining a copy of the decree". Dealing with section 12(2) of the old Act, this Court in *Jagat Dhish Bhargava v. Jawahar Lal Bhargava & Others*(1) made the following observation at page 926 "There is, however, a sharp difference of opinion in regard to cases where an application for a certified copy of the decree is made after the said decree is drawn up. In dealing with such cases Courts have differed as to what would be the period requisite for obtaining the certified copy of the decree. The Bombay, Calcutta and Patna High Courts, appear to have held that the period taken in drawing up of the decree would be part of the requisite period, while other High Courts have taken a contrary view. It is significant that though the High Courts have thus differed on this point, in every case an attempt is judicially made to do justice between the parties". The Bombay view was the majority view.

x x x x Section 12 (2) of the old Act came up for consideration before this Court in a recent decision in *Lala Bal Mukand (Dead) by L Rs. v. Lajwanti and others*,(2) but this Court, while approving of the view held by the majority of the High Courts under the section, expressed no opinion on the new section 12(2) of the 1963 Act read with the Explanation. So far as the expression "time requisite" used in section 12(2) is concerned this Court, however, observed in- that decision as follows "If any period of the delay in preparing the decree was attributable to the default or negligence of the appellant, the latter shall not be entitled to the exclusion of such period under section 12(2) of the Limitation Act, 1908".

That was a case in which, like the instant case, the plaintiffs did not pay the court fee within the time originally fixed in the judgment and the appeal by the defendant was held to be barred by the High Court without excluding the time that the plaintiffs had taken for depositing the court fee to enable the court to prepare the decree. In the above context this Court observed as follows :-

"Applying the law as enunciated above to the acts of the case in hand, it will be seen that the drawing up or coming into existence of the original decree, of which the copy was sought, was conditional upon the payment of Court-fee by the plaintiffs within thirty days of the pronouncement of the judgment (30-10-1956). The plaintiffs did not comply with that direction within the time originally specified in the judgment. They deposited the Court fee only on 18-1-1957 within the extended time which was granted without notice to the defendant-appellant. Even after that, the decree was (1) [1961] 2 S.C.R. 918.

(2) A.I.R. 1975 S.C. 1089.

not signed till 30-1-1957. Under the judgment or any rules of the Court, the appellant was not required to take any step towards the preparation of the decree. No period of the delay in drawing up the decree was attributable to the fault of the appellant. The delay was mainly due to the delayed deposit of the Court-fee by the plaintiffs and partly due to the laxity of the office of the Court. Although the appellant prematurely filed an application for getting a copy of the non-existent decree on 26-11-1956, he could legitimately defer that action till the condition precedent on which the drawing up of the decree was dependent was performed by the plaintiffs. It would not have been

extrava- gant for the appellant to wait till the Court- fee was deposited by the plaintiffs, for, in the event of non-deposit of the Court-fee, there was a reasonable possibility of their suit being dismissed, or at any rate, of the decree against which the defendant felt aggrieved and eventually appealed', not being passed. Under the circumstances, the appellant was entitled to the exclusion of the entire time between the date of the pronouncement of the judgment and the date of signing of the decree, as the 'time requisite for obtaining a copy of the decree'".

Having regard to the state of the law with regard to section 12 of the old Limitation Act and the sharp cleavage of opinion in the High Courts, the, Law Commission in its Third Report on the Limitation Act, 1908, observed in para 37 at page 17 as follows :-

" some courts have taken the view that the delay in drafting the decree before an application for a copy is made should be deducted as 'time requisite'. But we think that a delay of the office before the application for a copy is made should not count in favour of the party. A suitable provision should be added to make this clear".

The Commission, therefore, proposed at page 76 of the Report insertion of an explanation to section 12 in the following terms :-

"Explanation.-Any time taken by the Court to prepare the decree or order before an application for copy thereof is filed shall not be regarded as time requisite for obtaining the copy within the meaning of this section".

This is the background of the Explanation introduced in the 1963 Act.

The Bill for the new Limitation Act was introduced in the Rajya Sabha in June 1962 (Bill No. XI of 1962). The Objects and Reasons appended to the Bill for inserting the new section 12 are given as follows :-

"The existing section 12 is being amended

(i) to include applications for revision within its scope;

(ii) to provide expressly that the time requisite for obtaining a copy of the judgment in the case of an application for leave to appeal is also to be excluded;

(iii) to make it clear that any delay in the office of the court in drawing up a decree or order before the application for a copy thereof is made, shall not be excluded."

As noted earlier the Explanation was introduced in order to finally put the lid on the controversy with regard to the time requisite for obtaining a certified copy of the decree under section 12(2). The majority of the High Courts under the old section 12(2), with-out the Explanation, took the view that in excluding the time requisite for obtaining a certified copy of the decree the entire time required for preparation of the decree by the office after pronouncement of the judgment and the signing of

the decree was to be excluded irrespective of the fact whether the application for certified copy of the decree was made prior to the signing of the decree or after it. This Court in *Lala Bat Mukand* (supra), as stated earlier, approved of the view taken by the majority of the High Courts. It is worth repeating that while approving of that view under the old Act this Court made it clear that "it expressed no opinion as to whether the law enunciated in *Lala Bat Mukand* (supra) would hold good in cases governed by the new section 12 of the 1963 Act".

It is exactly this question which has now been presented before us for decision. It is contended on behalf of the appellant that, - under the new section 12(2), in calculating the time requisite for obtaining the certified copy of the decree, the time which elapsed prior to signing of the decree, should also be excluded under section 12(2) notwithstanding that the application for certified copy was made after the preparation of the decree. Relying on the new section 12(2) read with the Explanation of the 1963 Act, it is not possible to accept the submission that in computing the time requisite for obtaining the copy of a decree by an application for copy made after preparation of the decree the, time that elapsed between the pronouncement of the judgment and the signing of the decree should be excluded. The Explanation does not countenance such a construction of section 12(2). It is to set at rest the difference of views amongst the High Courts that the explanation was introduced and it is not permissible now to allow the same controversy to be perpetuated even after the 1963 Act.

The appellant strongly relied upon the Full Bench decision of the Bombay High Court in *Subhash Ganpatrao Buty and Another v. Maroti s/o Krishnaji Dorlikar and Others*(") in support of his submission. The Full Bench observed in that decision that-

"..... it is the duty of the Court to interpret the language actually employed and to determine the intention of the (1) A.I.R. 1975 Bom. 244.

legislature from such language and since there is no ambiguity about the language actually employed, neither the recommendation of the Law Commission nor the aims and object as set out in the Statement of Objects and Reasons can be brought in aid or can be allowed to influence the natural and grammatical meaning of the Explanation as enacted by the Parliament".

The Full Bench further observed "We are conscious that the interpretation which we have placed upon the Explanation is in teeth of the recommendation of the Law Commission and the object stated in the Statement of Objects, and Reasons for introducing the Explanation to section 12(2) but having regard to the language employed, which is very clear and unambiguous, it is our duty to give the plain and natural meaning to such language. The Full Bench further observed :

I "In other words, the plain and grammatical meaning of the Explanation in our view, is that while computing the 'time requisite' for obtaining a copy of a decree, any time taken by the Court to prepare the decree or order before an application for a copy thereof is made shall be included."

The Full Bench overruled a decision of the same court in *Sitaram Dada Sawant and Another v. Ramu Dada Sawant*(1), wherein Chandrachud, J. (as he then was) had taken the view, on the new section, that the appellant therein should be entitled to the exclusion of time between the date on which he applied for certified copies and the date on which those copies were ready for delivery and that the time between the date of the judgment and the date on which the decree was drawn up should not be excluded if the appellant had applied for certified copy of the decree after the decree was drawn up. The Full Bench gave a good deal of importance to what it described as "the aspect as to what topic is dealt with by the Explanation. . .". The Full Bench, *inter alia*, also referred to a decision of the Orissa High Court in *Koutuki Sabatani v. Raghu Sethi*(2) where the said High Court observed that "it, appears to us that the Explanation which was actually added to section 12 of the Act means just contrary to the suggestion of the law Commission". This is the first time that this Court is called upon to deal with section 12 of the Limitation Act, 1963, with the Explanation added to it. We have already noted the history of this provision having regard to the recommendations of the Law Commission and the Statement of the Objects and Reasons while introducing the Bill in Parliament. The object of the Explanation is to facilitate computation of the time requisite for obtaining a copy of the decree about which there had been earlier sharp difference of judicial opinion. It will be an irony if

(1) A. I.R 1968 Bom. 204.

(2) A.I.R. 1970 Orissa, 116.

the same difference of opinion continues even after the new Explanation. Since the Explanation is apparently capable of conflicting views still current in several High Courts which have been noticed in the Bombay Full bench case of *Subhash Ganpatrao Buty* (*supra*), two of which are now from the same High Court, it is not possible merely to decide, as the Full Bench has done, "on a natural and grammatical meaning of the Explanation" to section 12(2). It is clear from the decision of the Full Bench that it would have arrived at a different conclusion and would have perhaps even agreed with the decision of the single Bench of that Court if it did not fall into an error in holding that there was absolutely no ambiguity in the Explanation notwithstanding conflicting views expressed by some of the High Courts, including their own, to which their attention was drawn. We would not approve of reading the words in the Explanation, shall not be excluded" by mentally substituting them as "shall be included" for the purpose of construction. There is a scheme underlying the several clauses in section 12 along with the Explanation which is the opening section in Part III of the Act under the title "Computation of period of Limitation". Sub-clauses (1), (2), (3) and (4) use the same expression "shall be excluded" for the purpose of computing the period of limitation. The period of limitation is defined in section 2(j) and "means the period of limitation prescribed for any suit, appeal or application by the Schedule, and 'prescribed period' means the period of limitation computed in accordance with the provisions of this Act". Whenever, therefore, under section 12 a prescribed period of limitation has to be computed certain days are permitted to be excluded in order that a person who desires to appeal is not put to any inconvenience or hardship in the prescribed period being shortened by certain exigencies for no fault of his or for reasons beyond his control.

When in the several clauses of section 12, as mentioned above, certain days shall have to be excluded, what is not to be excluded, therefore, has also to be clearly explained. That is the *raison d'être* for the Explanation newly introduced. In the entire scheme of section 12 dealing with exclusion of time for the purpose of computing the prescribed period of limitation, it is not possible to substitute the words "shall not be excluded" by reading the same as "shall be included" which will introduce an alien concept which is different from that disclosed in the setting of all the provisions. It will not be enough to say that the meaning of the words "shall not be excluded" is the same as "shall be included". The words "shall not be excluded" in the Explanation have to play an appropriate role in the setting and context of the expression "shall be excluded" used in all the preceding clauses in section 12. It is only preserving the words intact in the Explanation, its correct intent has to be ascertained. Let us take, an illustration. The period of limitation under the Code of Civil Procedure for an appeal to a High Court from any decree is 90 days from the date of the decree. The date of the decree is the date of the judgment under Order 20, rule 7, C.P.C. Ordinarily, therefore, time begins to run subject to section 12 from the date of the judgment which is, for the particular purpose, the date of the decree. 90 days being the prescribed period of limitation, under section 12(1), the day from which such period has to be reckoned shall be excluded. Again under section 12(2), the time requisite for obtaining a certified copy of the decree shall be excluded. Under section 12(3), even the time requisite for obtaining a copy of the judgment on which the decree is founded shall also be excluded. Having thus in the above three clauses excluded a number of days in computing the prescribed period of 90 days, it was absolutely necessary to make it clear in the Explanation that the time taken by the Court to prepare the decree before an application for a copy thereof is made shall not be excluded. If the Explanation were not in these terms the old controversy would have persisted about the time claimed by a person before making an application for a copy, whether it should be excluded or not, in view of the earlier conflict of decisions. It is because of this history of the judicial controversy that the Explanation was phrased in the way it has been done by Parliament, namely, that the time taken by the court to prepare the decree before an application thereof is made shall not be excluded. In other words, that period which may elapse in preparing the copy of the decree, prior to the making of an application for copy, shall not be excluded when excluding the time requisite for obtaining a copy while computing the period of limitation. But for this Explanation it could have been again argued, that time also should be excluded as the entire period of time requisite for obtaining a copy in view of one line of earlier judicial decisions under the old Act. We are, therefore, clearly of opinion that the Law Commission had made a very salutary recommendation in order to make the position absolutely clear and to avoid any further controversy in the matter.

The Law Commission, in its wisdom, went to the extent of even suggesting the phraseology of the Explanation at page 76 of the Report. Parliament having taken note of the recommendations of the Law Commission made it clear in the Objects and Reasons while introducing the Bill that it was brought "to implement the recommendation of the Law- Commission. When the Explanation was added to section 12, Parliament sought to put a quietus to the long-standing judicial controversy with regard to "the time requisite for obtaining a copy" by clearly explaining that when time is excluded, as provided for in subsection (2) of section 12, the time that has elapsed from pronouncement of the judgment to the point of time prior to application for a copy of the decree shall not be excluded in computation of the time requisite for obtaining the copy. This is in accord

with reason and sound common-sense since a person does nothing in court for obtaining a copy prior to his making an application for a copy when there is nothing, in his way, not to. This was the reason underlying the Explanation which prompted the legislature not to permit exclusion of such idle time of the applicant while computing the time requisite for obtaining a copy for the purpose of computing the period of limitation. We have to give effect to this Explanation with its avowed intent.

Computation of limitation is predominantly the governing factor in section 12. In order to achieve an easy computation of the period of limitation without hardship to litigants and to avoid vicissitudes of time-consuming litigious exercises which the old section had been subjected to, the Explanation has been introduced. In order to enable a correct computation of the period of limitation under section 12(2) with certitude, when it is provided, therein, that certain time has to be excluded, it is then clearly provided, at the same time, in the Explanation that a particular period of time shall not be excluded. As if the section and the Explanation say :

You are permitted to exclude the time requisite for obtaining a copy but in computing that time, which is requisite and which is allowed for exclusion under section 12(2), you shall not exclude, while computing the period of limitation, the time that had elapsed from the date of judgment to the date of your application for a copy. The object seems clearly to be not to give premium to unmerited idleness and indifference of litigants in making application for copy.

The words "under this section" in the Explanation are significant relating, as it does, to the governing topic in the section, 'namely, computation of the period of limitation. There are no twin topics, one for computation of the period of limitation under section 12(2) and the other for computation of the time requisite for obtaining a copy of the decree under the Explanation divorced from computation of limitation. The Explanation cannot be read in isolation disowning the substantive provision, namely, section 12(2).

The position may be different if a decree in law cannot be prepared because of non-compliance with some directions in the judgment. The Explanation does a composite service, positive as well as negative. Positively it prescribes a mode of correct computation of the time requisite by a process of exclusion and negatively it mandates for not excluding the time before making an application for copy. The Explanation does not warrant inclusion of a certain period positively excluded by it for the purpose of computing the period of limitation by "including" that excluded period for the benefit of a person prior to his making an application for copy. The interdict of the Explanation must be respected.

The subject-matter of section 12(2) and the Explanation is identical and, with respect, we are unable to agree with the opinion of the Full Bench in Subhash Ganpatrao Buty (supra) that there is a dichotomy of "topic" in the said two provisions. We have seen that there may be scope for two views on the Explanation and that would inevitably forbid a mere grammatical construction of the same on the touchstone of the plain

text divorced from the object of the provision. The real intent will have to be discovered from the scheme of the provisions. It is by following that rule of construction, we have gone into the history and background of the provision together with the recommendation of the Law Commission, as also the Objects and Reasons of the Bill in order to arrive at the proper intent of the Explanation.

In interpreting the provisions of a statute the courts have to give effect to the actual words used whether couched in the positive or in the negative. It is not permissible to alter the cohesive underlying thought process of the legislature by reading in positive sense what has been set out in negative terms. The courts will try to discover the real intent by keeping the diction of the statute intact. This is another cardinal rule of construction. The view we have taken does not require us to mentally substitute the words in the statute for those used by the legislature. Besides, even under the new Act there having already arisen a conflict of decisions in several High Courts the sooner the controversy is set at rest the better. We are happy that in arriving at this decision we are effectuating a very useful recommendation of the Law Commission whose anxiety in the Report was clearly manifest to put an end to an ancient judicial conflict. The Court will do its duty not to recommence another series of litigation.

The correct legal position, therefore, is that under section 12(2) read with the Explanation a person cannot get exclusion of the period that elapsed between pronouncement of the judgment and the signing of the decree if he made the application for a copy only after preparation of the decree. We endorse the views on the line of the Bombay High Court in *Sitaram Dada Sawant* (supra). With respect, the Full Bench decision in *Subhas Ganpatrao Buty Asupra* cannot be approved.

This will, however, not conclude the matter before us. While the above is the true legal position that emerges from section 12(2) read with the Explanation there may be an exceptional case, as the instant one, before us. The time requisite for obtaining a copy under section 12(2) must be that time which is "properly required" for getting a copy of the decree see *Lala Bal Mukand* (supra). It is not possible to conceive how a person may obtain a copy of a decree if that decree, in view of the recitals in the judgment pronounced, cannot be prepared without some further action by a party. A judgment which is unconditioned by the requirement of any action by a party, stands on a different footing and in that event the date of the judgment will necessarily be the date of the decree. In such a case, a party cannot take advantage of any ministerial delay in preparing the decree prior to his application for a copy, that is to say, if there is no impediment in law to prepare a decree immediately after pronouncement of the judgment, no matter if, in fact, the decree is prepared after some time elapses. No party, in that event, can exclude that time taken by the court for preparing the decree as time requisite for obtaining a copy if an application for a copy of the decree has not been made prior to the preparation of the decree. It is only when there is a legal impediment to prepare a decree on account of certain directions in the judgment or for non-compliance with such directions or for other legally

permissible reasons the party, who is required to comply with such directions or provisions, cannot rely upon the time required by him, under those circumstances, as running against his opponent.

When a judgment is delivered in the presence of the parties clearly announcing certain steps to be taken by the plaintiff before the decree can be prepared, the matter stands on an entirely different footing. In the present case without deposit of the deficient court fees by the plaintiff the decree could not be instantly prepared under the law. Time was given to the plaintiff for that purpose and there could be no decree in existence in law until the plaintiff supplied the court fees. Without the existence of the decree any application for a copy of the decree would be futile. Therefore, on the facts of this case, in view of the operative part of the judgment, the date of the decree was when the plaintiff furnished the court fees as ordered. It was only then for the first time possible to prepare the decree in terms of the judgment. In this case the decree was prepared on the very day, namely, May 6, 1976, when the court fees were furnished by the plaintiff. As has been observed in *Lala Bal Mukand* (supra) it would have been "extravagant" for the appellant to apply for a copy of the decree before the decree could be prepared. On the special facts of this case there was no default on the part of the appellant and the appeal was not barred by limitation. The respondent cannot take advantage of his own default to defeat the appellant's appeal on the ground of limitation. The period of 90 days, in this case, will count from the date when the plaintiff had deposited the court fees, as ordered, when only the court could take up the preparation of the decree. It is not a case of the court omitting or delaying to prepare the decree without any further action by a party.

Even otherwise, in the entire circumstances of the case disclosing sheer indifference, perhaps, negligence, on the part of the Advocate, Shri Bharatinder Singh, and no laches, whatever, on the part of the appellant, we would have been inclined to condone the delay of 12 days under section 5 of the Limitation Act.

In the result the appeal is allowed, The judgment and decree of the High Court are set aside. We will, however, make no order as to costs, particularly in view of the fact that counsel appearing for both sides expressed that there would be a sincere endeavour by the parties to settle the matter when the records reach the High Court. We are sure that with the good offices of counsel the High Court will be able to take up the appeal at an early date, if possible, to record a final settlement of the dispute between the parties. With this hope we part with the records. P.H.P. Appeal allowed.