

PART D.—PROCEDURE IN THE CASE OF APPEALS AND
APPLICATIONS PRESENTED AFTER PERIOD OF
LIMITATION.

1. Upon the presentation of a memorandum of appeal to an Appellate Court, the officer whose duty it is to examine such memorandum shall examine the copy or copies of Judgments and decrees attached to the appeal, and shall calculate whether, after deducting the allowance sanctioned by law, the memorandum has been presented within time.

Memorandum of appeal to be checked for purposes of limitation.

1.(i) If the memorandum of appeal appears to be presented after time, or there appears to be ground for doubting whether it is within time, such officer shall record upon or annex to the memorandum of appeal a note of his calculation, showing:—

Office to note when appeal appears to be time-barred.

(1) the date when the period expired, without any allowances ;

(2) the allowances to which appellant seems entitled;

(3) the date when the period expired, after all the allowances, to be made under head (2) have been made.

(ii) In making such calculations the following points must be borne in mind:—

(a) The date when the time expired under head (1) is to be calculated irrespective of such date falling upon a day when the Court is closed for a holiday (including Sunday) or for vacation, any allowance on this account being noted under head (2) of the calculation.

Points to be borne in mind in making calculation.

(a) The entries endorsed on copies of judgments and the like will be assumed to be correct.

(b) The date on which the application for copy is made and also the day on which the copy is given will each be reckoned separately as one day unless both events occur on the same day.

(b) The date on which a copy is ready for delivery will be deemed, for the purpose of such calculation, to be the day on which it is given.

In this connection attention is invited to the ruling of the High Court in I. L. R. III Lahore 280, where it was

Calculation in case of copies sent by post.

held that when copies of judgments are dispatched by post, in accordance with rules, the period intervening between completion and dispatch of the copies must be excluded in computing the period allowed for an appeal.

Duty of office to obtain orders of the court.

2. It shall be the duty of the officer presenting the memorandum of appeal for the consideration of the Court of appeal to bring to its notice the note of calculation above prescribed.

Note by court.

3. Whenever, on the date fixed for taking a memorandum of appeal into consideration, it appears *prima facie* to the Court to have been presented after the expiry of the period prescribed by law, as calculated in the manner prescribed by law, the Court shall record its opinion to that effect, stating the number of days by which such period seems to have been exceeded.

Appellant required to explain for delay.

4. In such cases, if the appellant has not tendered, with the memorandum of appeal, any explanation of the delay in presenting it, the Court shall, if the appellant is present in person or by agent, record an order thereon, or to be annexed thereto, requiring the appellant to supply such explanation in writing, and to represent such appeal within a period to be specified in the order. Such period may be enlarged in the discretion of the Court, either before or after it has expired, upon sufficient cause for such enlargement being shown to the satisfaction of the Court.

Explanation of appellant.

5. When the memorandum of appeal is represented with the explanation required, or when the memorandum of appeal as first presented contains an explanation of the delay in presenting it, the Court shall take into consideration the explanation offered, and may examine the appellant or his agent, in order to elucidate the explanation.

Court may dismiss appeal as barred by time.

6. If the Court is of opinion that assuming all the facts stated by way of explanation to be true, the explanation is insufficient, the Court shall record an order to that effect, and shall reject the appeal as barred by time.

Appellants to be called upon to prove facts which bring appeal within time.

7. If the Court considers that if all or any of the facts stated by way of application be true, the explanation will be sufficient to justify the admission of appeal it shall give the appellant an opportunity of proving the truth of the facts stated.

Mode of proof.

8. Such proof may be given either by affidavit, or by oral testimony, upon a date to be fixed by the Court for that purpose, unless the

appellant be ready to give, and the Court find it convenient to receive, such proof at once.

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9. When no such explanation is presented with the memorandum of appeal, and the appellant is not present in person or by agent, the Court, may, after recording its opinion as directed in paragraph 4 above, unless it sees cause to postpone the passing of a final order, forthwith dismiss the appeal as barred by time without considering the merits of the appeals as set forth in the memorandum.

Power of court to dismiss appeal as barred by time when no explanation of delay attached to memorandum of appeal.

10. Similar procedure should be observed, so far as may be, by all Civil Courts, whether of original jurisdiction or not, in respect of applications for review, and any other applications to which the provisions of section 5 of the Indian Limitation Act have been made applicable. The applications for re-admission of appeals under Order XLI, Rule 19, applications for restoration of suits under Order IX, Rules 4 and 9 and applications for setting aside of decrees passed *ex-parte* under Order IX, Rule 13, are a few examples.

Procedure as to applications.