

(1999) 09 PAT CK 0050

Patna High Court

Case No: Appeal from Original Decree No. 144 of 1989

M/s Chen"s Carpentry  
Works (Pvt) Ltd.

APPELLANT

Vs

Hotel Satkar (Pvt) Ltd.

RESPONDENT

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Date of Decision: Sept. 27, 1999

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Order 5 Rule 19, Order 5 Rule 9, Order 9 Rule 13, 11, 21A

Citation: (1999) 3 PLJR 747

Hon'ble Judges: R.N. Sahay, J

Bench: Single Bench

Advocate: Subhro Sanyal and B.K. Bariyar, for the Appellant; L.K. Bajla and G.M. Singh, for the Respondent

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### Judgement

R.N. Sahay, J.

The extra-ordinary feature of the case is that the Subordinate Judge, Patna by the judgment under appeal ventured to declare the decree of the Calcutta High Court in Suit No. 158 of 1978 [Chen"s Carpentry Works (P) Ltd. vs. M/s Satkar (P) Ltd.] to be nullity having been obtained by practicing fraud upon the Court. The substantial facts are not in dispute and as the question raised in the appeal turns on jurisdiction of the Subordinate Judge to pronounce upon the validity of the decree of the superior Court it would not be necessary to state the facts in detail. Admittedly, the suit brought by the present appellant before the Calcutta High Court in its original jurisdiction was decreed ex-parte. The suit was filed by the appellant for a decree of Rs. 76,204.39p. for supplying furniture to the respondent.

2. After filing of the suit, steps were duly taken by M/s Khaitan & Company Advocate on behalf of the appellant for lodging the writ of summons as well as service thereof. Original writ of summons were sent by the Sheriff"s Office to the District Court, Patna for personal service on the respondent. Duplicate copy of the writ of

summons were forwarded by the Sheriff's Office under registered post to the respondent and the same was duly served and/or delivered to the respondent on or about 11th April, 1972. The duplicate copy of the writ of summons were duly received by and/or on behalf of the respondent.

3. By letter dated 27th/28th June, 1978 M/s Khaitan & Co. Advocates duly drew the attention of the Registrar, Original side of Calcutta High Court that the respondent had been served with the said duplicate copy of the writ of summons and requested him to have the suit placed in the list for ex-parte hearing for the reasons mentioned therein.

4. On 10th July, 1978 the above mentioned suit appeared in the list of Hon"ble Justice Mrs. Monjula Bose as an undefended suit inasmuch as the affidavit of service to be filed on behalf of the Sheriff's department was not ready and Her Lordship was pleased to adjourn the matter till 2.00 P.M. Thereafter Amar Kumar Sengupta, an employee of the Sheriff Calcutta filed an affidavit before 1.30 P.M. on the same date i.e. 10th July, 1978 stating that a duplicate copy of the writ of summons had been forwarded under registered cover to the defendant (respondent) on 5th April, 1978 and that the relative postal acknowledgment receipt was received in the Sheriff's office from the General Post Office, Calcutta on 17th April, 1978.

5. The said suit was taken up on the same day i.e. on 10th July, 1978 at 2.00 P.M. Hon"ble Justice Mrs. Monjula Bose after being satisfied about the service of the duplicate copy of writ of summons, proceeded to hear the suit. The Court passed the decree on the same day i.e. 10th July, 1978 for a sum of Rs. 76,204.39 in favour of the appellant.

6. By registered letter dated 9th December, 1978 M/s Khaitan & Co. called upon the judgment debtor to pay the decretal dues expressly referring to the said decree dated 10th July, 1978. By letter dated 2nd March, 1979 M/s Khaitan & Co. once again called upon the respondent judgment debtor to pay the decretal dues. The advocate of the appellant did not receive any reply from the judgment debtor-respondent.

7. Thereafter the appellant took steps for having the decree executed and an application was filed before the court of District Judge, Patna on or about 24th June, 1980 for execution of the aforesaid decree. The said execution petition was transferred to the court of Subordinate Judge-1, Patna. Notice of execution proceedings given to the respondent on 26th August, 1980 returned unserved on 26th August, 1980. The appellant was informed by his counsel that the respondent malafide refused to accept the notice issued by the court of Subordinate Judge, Patna.

8. On 9th January, 1981 the Subordinate Judge-1 Patna, passed order of attachment in respect of the properties of the respondent. The order of attachment, however, could not be given effect to.

9. On or about 19th February, 1981 M/s Khaitan & Co. received notice of an application for setting aside the decree dated 10th July, 1972 [sic♦1978 ?]. On 20th February, 1981 the respondent moved the said application under Order IX, Rule 13 C.P.C. for setting aside the ex-parte decree dated 10th July, 1978. After hearing the parties, Hon"ble Justice Mrs. Manjula Bose directed for filing affidavits and the hearing of the matter. The ground for setting aside the ex-parte decree was that the writ of summons had not been served on the respondent. The advocate for the appellant M/s Khaitan & Co. inspected the records of Calcutta High Court and discovered that the original affidavit affirmed by Amar Kumar Sengupta on 10th July, 1978 was not traceable in the record of the suit. Carbon copy of the said affidavit was in the custody of M/s Khaitan & Co. Amar Kumar Sengupta affirmed an affidavit on 25th February, 1981 stating the correct facts.

10. On or about 1st May, 1981 the respondent filed Title Suit No. 147 of 1981 in the court of Subordinate Judge-1, Patna praying for setting aside the ex-parte decree dated 10th July, 1981 [sic♦1978?] passed by the Calcutta High Court on the ground that the same had been obtained by the appellant by practising fraud. The only act of fraud alleged was suppression of the processes of the Court. The respondent also made an application for injunction in the said suit for restraining the appellant from executing the decree dated 10th July, 1978.

11. On 1st August, 1985 counsel appearing on behalf of the respondent proposed for amicable settlement. Counsel appearing on behalf of the appellant offered to settle the matter at Rs. 1,00,000/- against the actual dues of Rs. 1,20,000/- the counsel for the respondent prayed for time to contact the client and the matter was adjourned till 9th August, 1985.

12. On 9th August, 1985 counsel appearing for the respondent submitted that he had not received any instruction. The matter was adjourned till 14th August, 1985 for Orders. On 14th August, 1985 Learned Counsel appearing on behalf of the respondent submitted before the Calcutta High Court that his client had appeared and would have direct negotiation with the appellant and prayed for a short adjournment. The matter was adjourned till 19th August, 1985 for Orders. On 19th August, 1985 it was submitted on behalf of the appellant that no attempt was made by the respondent to settle the matter. Counsel for the respondent submitted that the matter has not been settled for whatever reason may be.

13. On 19th August, 1985 Hon"ble Justice Mrs. Monjula Bose passed the following order on the application of the respondent :

This appeal is wholly mischievous and malafide one and is required to be dismissed with costs. The court is satisfied that the petitioner all along was aware of the proceeding and did not attempt to contest the same when the ex-parte decree was passed. Several letters were written to the petitioner intimating it of the steps being taken by the plaintiff. Be that as it may, the petitioner after having moved this

application through counsel indicated that the matter would be settled and even after Court had heard the arguments, requests were made to the Court to adjourn the matter on several dates on the plea that the representative of the petitioner was coming from Patna and he would require some time to be present before the court and as the matter was going to be settled, the court would not have to go into the merits of the application. On last Wednesday when the matter appeared on the list Mr. Pulak Das, Advocate on record for the petitioner intimated the Court that his client had arrived from Patna and would communicate with the plaintiff direct with regard to the proposed settlement and the matter should appear in the list of today for orders so that final terms and conditions could be filed. On this assurance that the matter would be settled the Court did not pass the order on Wednesday when the matter appear on the list for Orders. The court is now told by the Learned Counsel for the petitioner that the matter has not been settled for whatever reason it may be while Mr. Jhunjhunwala, learned advocate for the plaintiff informs the Court that no attempt was made by the defendant to negotiate with the plaintiff or its advocate on record at all, although an assurance had been given to the Court that time from Wednesday last till the week-end will be utilised for the said purpose. It thus appears that frivolous pretexts are being put forward by the petitioner only to gain time and to avoid execution of the ex-parte decree which has been passed against it. this Court is also satisfied that there is no ground for setting aside the ex-parte decree nor are there any ground for giving leave to the petitioner at this stage to file any written statement and/or for any order of injunction being passed restraining the plaintiff from taking any steps for execution of the said ex-parte decree. It was submitted to Court during the pendency of the proceeding that a suit had been filed by the petitioner at Patna Court for declaration that the decree passed by this Court in above suit is illegal and inexecutable and for injunction restraining the plaintiff from executing the decree passed in this proceeding and on 9th February, 1983 this Court passed on order directing the parties not to proceed with the pending application in Title Suit No. 147 of 1981 before the Subordinate Judge at Patna until disposal of this application. This application is found to be malafide, vexatious and harassing and made only for the purpose of thwarting the execution of the decree and as such the application is dismissed with costs and the plaintiff is at liberty to execute the decree forthwith irrespective of pending application in the Patna proceeding and/or Title Suit No. 147 of 1981 at Patna Court. All the parties are to act on a signed copy of the minutes of this order on usual undertaking.

14. The appellant was given liberty to proceed with the execution forth (sic) irrespective of the pending application in the above mentioned suit at Patna. Pursuant to the aforesaid order of the Calcutta High Court, the appellant on or about 14th October, 1985 moved an application before the court of Subordinate Judge-1 Patna praying that the decree dated 10th July, 1978 be executed forthwith.

15. It may be mentioned that the Subordinate Judge did not summon the record of the proceeding from the Calcutta High Court. The suit was decided on the pleadings of the parties. The decree of the Subordinate Judge is impugned, inter alia, on the following grounds :◆

(i) The Subordinate Judge, Patna had no jurisdiction to set aside the decree of the Calcutta High Court in Title Suit No. 158 of 1978. The remedy, if any, of the plaintiff-respondent lay before the Calcutta High Court and nowhere else.

(ii) The petition under Order IX Rule 13 C.P.C. having been dismissed by the Calcutta High Court on merits, only remedy available to the plaintiff was to move the Calcutta High Court in Letters Patent Appeal or before the Supreme Court of India. The suit was barred by principles of res judicata.

(iii) The court below having found that the Calcutta High Court had jurisdiction to entertain the suit, the suit was not maintainable at Patna.

(iv) Heavy onus lay upon the respondents to produce the record of the Calcutta High Court or the order sheet of the suit ought to have been placed before the court who had dismissed the suit.

(v) The subordinate Judge was not hearing the petition under Order IX Rule 13 C.P.C. which having already been dismissed by the Calcutta High Court, onus is on the plaintiff to prove fraud only by cogent and reliable evidence.

(vi) The Subordinate Judge was wrong to equate the alleged non service of notice with fraud.

(vii) The Subordinate Judge resorted to a novel decree in concluding fraud by going into the merit of the claim and denial to the claim and/or delayed or defective completion of the work entrusted to the defendant.

(viii) The Subordinate Judge cast the entire onus on the appellant to prove that the decree obtained was in accordance with law.

(ix) The court below resorted to unknown procedure by restoring the suit instituted in Calcutta High Court to its own file for trial.

(x) The express finding of the trial court that the Hon'ble Calcutta High Court had the initial jurisdiction to entertain the suit in regard to the cause of action ousted the jurisdiction of the Court to proceed with the suit.

16. The defence of the appellant has been noted by the learned Subordinate Judge in para-9 of the judgment as extracted below :◆

Further case of the defendant is that it performed the contractual obligation within the time extended by the mutual consent of the parties and also to the full satisfaction of the plaintiff. That the allegation regarding non/faulty/delayed fulfilment of the contractual obligation are nothing but tissue of white lie. It has

been submitted that the defendant after completion of the job, specifically in accordance with the specification of quotation, submitted final bill of Rs. 1,67,566.84p. less the payment made in three instalments amounting to Rs. 99,000/-. In this way, a sum of Rs. 68,566.84 was to be paid by the plaintiff to the defendant. It has been submitted that as per terms of the agreement, the plaintiff was also required to pay interest @ 12% per annum, if the payments are not made within the stipulated period. That the plaintiff, inspite of demands when failed to pay the outstanding dues, then, the defendant after giving the legal notice to the plaintiff, filed the suit no. 158/78 before the Hon"ble Calcutta High Court. It has been further submitted that the summons sent through Registered post with acknowledgment due were duly served on the plaintiff and Sri A.K. Sengupta, an employee of the Sheriff of Calcutta sworn an affidavit in support of said service of summons. Thereafter, the suit was heard and decreed exparte. The allegation regarding obtaining the impugned decree after practising fraud or suppressing all the processes of the Court, have been vehemently challenged.

17. Learned Subordinate Judge has held that the present suit was maintainable in view of the fact that the jurisdiction of the Subordinate Judge was at par with the original jurisdiction of the Calcutta High Court. The Subordinate Judge has held that the inferior court is entitled to set aside a decree passed by a superior court on the ground of fraud, if it is otherwise competent to entertain the suit (11 C.W.N. 579). The Subordinate Judge negatived the plea of the plaintiff that the Calcutta High Court had no jurisdiction to entertain the suit filed by the defendant. The grounds for setting aside the decree are set out in paragraphs-14 and 15 of the judgment as extracted herein below :◆

14. Since both these issues, are interconnected, as such, they are taken up together. The plaintiff's case, in brief is that the impugned agreement was entered into at Patna by the parties and it was to be performed at Patna. That the payments were also made at Patna. In view of the aforesaid facts, it has been submitted that since no part of the cause of action accrued within the territorial jurisdiction of the Hon"ble Calcutta High Court, as such, the court had no jurisdiction to take cognizance of the disputes raised in the suit No. 158/78 filed by the defendant. On the other hand, it has been submitted that said agreement was entered into at Calcutta and it was to be performed partially at Patna and partially at Calcutta. The question of places of entering into the contract is relevant only for the purpose of deciding the territorial jurisdiction of the Hon"ble Calcutta High Court. Admittedly, the defendant submitted its first quotation on 29.11.75 (Ext. 1) for doing certain wood works for the plaintiff. Thereafter, a revised quotation (Ext. 1/A and also marked as Ext. A for defendant) was submitted by the defendant for the same job. It appears that the plaintiff by his letter dated 2.12.75 (Ext. 2) accepted the same with certain modification and the defendant by writing a letter on the same date (Ext. 1/B) affirmed the said acceptance by the plaintiff. The perusal of Ext. 1/A i.e. the revised quotation goes to show that the defendant had undertaken two types of job,

firstly, it had to supply a number of furnitures as per specification given in the quotation and secondly, he had to do the job of internal decoration of the hotel of the plaintiff, situated at Fraser Road, Patna. The defendant had also put certain conditions which have been typed on the foot of the quotation. The perusal of condition (g) & (h), appended on the foot of the quotation show that the plaintiff had to inspect the furnitures at the factory of the defendant, situate at Calcutta and he had to pay the full bill leaving 10% retention money before the despatch of the same to Patna. The plaintiff had also to bear the insurance charges of the transhipped materials. This condition expressly shows that the contract was to be partially performed at Calcutta also. The defendant had also filed a letter dated 27.7.1976 (Ext. B/9) and a letter dated 4.9.76 (Ext. B/10) sent by the defendant to plaintiff to show that the representative of the plaintiff used to inspect the furnitures at Calcutta and also used to take delivery of the same at that place. There are also other letters present on record, mention of which appear unwarranted, go to show that actually the finished furnitures to be supplied by the defendant, were constructed/manufactured at Calcutta and the representative of the plaintiff took delivery of the same at Calcutta. In this connection, suffice it to refer the challans (Ext. D to D/4), the perusal of which show that the delivery of the furnitures were taken at Calcutta by the transporter of the plaintiff. In light of the aforesaid facts, it can be safely inferred that the admitted contract entered into the parties was to be performed partially at Calcutta and partially at Patna. Under such circumstances, I refrain myself from entering into the controversy regarding the place of entering into the contract by the parties, because in view of the above findings, the issue of jurisdiction can be easily decided and recording of a finding regarding place of entering into the contract becomes purely of academic interest.

15. This controversy can also be answered from another angle of vision. By 1976 amendment of the CPC a new section 21A has been added. This provision bars the filing of a suit to set aside a decree on the sole plea regarding place of suing. In view of above provision, the plaintiff is now precluded from raising the question of territorial jurisdiction of the said court, who passed the impugned decree.

18. The appellant in paragraphs no. 43, 44, 61, 62 and 63 of the written statement set out the facts which led to ex-parte decree in the Calcutta High Court.

19. The most objectionable aspect in the whole case is that heavy onus lay on the plaintiff to satisfy the court that summons were not served on him in accordance with law but the plaintiff did not apply to the court to summon the records from the Calcutta High Court. In my view, the trial court could not have reached to correct conclusion without looking to the records of the Calcutta High Court, it was not permissible to decide important issue merely on the assertion of the plaintiff.

20. The Subordinate Judge has observed that the letter of the Solicitor of the appellant to the Registrar of the original side of High Court of Calcutta impliedly shows that till the disposal of the suit original writ of summons sent through Patna

District Court was not received back by the Hon"ble Court. He found that there is no evidence that writ of summons were ever served on the plaintiff in the manner prescribed under Order V Rules 9 to 19. The Subordinate Judge also held that there is no pleading as to who received the summon sent through registered post on behalf of the plaintiff. The Managing Director of the plaintiff's company denied having received summon sent through registered post. The record of the Calcutta High Court would have disclosed that the summons under registered post was served on [sic or ?] not and in absence of records the plea of the plaintiff in this regard could not have been accepted. Mere denial that registered summons were not served is not enough. It is not a case where registered summons were not sent. The Subordinate Judge has observed that presumption that a letter posted reached its destination is rebutted when the addressee denies to have received it. (1971 PLJR 587).

21. This is not a case where the suit was decided on deemed service of notice. The Subordinate Judge has thrown onus on the appellant to prove the service of summons. This should have been the case where the plaintiff had filed a suit to set aside ex parte decree without first approaching the Calcutta High Court to set aside the decree under Order IX Rule 13 Code of Civil Procedure. The order of the Calcutta High Court is categorical that there is no ground to set aside the ex-parte decree nor there were grounds for giving leave to the respondent to file written statement. The application to set aside ex-parte decree was found to be malafide, vexatious and made only for the purpose to thwart execution of the decree. The finding of the Subordinate Judge that summons were not duly served on the plaintiff is absolutely untenable.

22. Learned Subordinate Judge persuaded to decide the plea of the plaintiff that on proper accounting there will be no dues to the appellant and even if the case of the appellant is accepted, the appellant will not be entitled to any amount beyond Rs. 14,204/-. Case of fraud sought to be made out by the plaintiff has been taken into consideration by the Subordinate Judge in para 26 of the judgment as extracted below :◆

To be more clear, the case of plaintiff regarding fraud may be divided in two parts. First part which touches the factual aspects of the claims of defendant made at Calcutta Court is that the defendant firstly failed to discharge his contractual obligation within the period of three and half months prescribed in contract and thereby the plaintiff was made to suffer losses both monetary as well as of reputation due to delayed opening of the hotel. In the second part, it has been submitted that the defendant did not perform some jobs entrusted but it charged for the same in its final bill, which is basis for passing ex parte decree. Lastly, it has been submitted that the quality of the work performed was found to be hopelessly poor and the defendant inspite of reminders when failed to rectify the defects then, the plaintiff in order to keep the opening schedule of the hotel got the same

rectified by engaging other agencies at very high cost. As such, the plaintiff was entitled for remission on these scores from the final bill. It has been alleged that the defendants suppressed the aforesaid facts before the Hon"ble court and obtained a decree for the entire bill amounting to Rs. 68,000/- and odd. To sum up, the claim of the plaintiff is that the defendant for wrongful gains, deceitfully suppressed the factum of non/defective/delayed performance of the contract from the Hon"ble Calcutta High Court and with this aim and motive also got the processes suppressed, so that fraud going to be practiced may not be detected. This allegation regarding suppression of summons constitute the 2nd part of the case of fraud made out in plaint.

23. The Subordinate Judge has entered the question whether the appellant had performed the contract within the stipulated time or he has committed breach of the terms of the agreement. Learned Subordinate Judge inferred from this circumstances that the decree has been obtained by fraud. It may be recalled that the plaintiff during hearing of the application under Order IX Rule 13 C.P.C. before the Calcutta High Court informed the learned Judge of the Calcutta High Court that he was agreeable to negotiate with the appellant and settle the claim. The matter was therefore adjourned. After giving undertaking, the plaintiff backed out and made no attempt to negotiate with the defendant. The claim of the appellant was inflated and as the case of the plaintiff is that the defendant was not entitled for anything beyond Rs. 14,000/- against the claim of Rs. 1,68,000/- he would not have expressed his desire to settle the matter. This also negatives the plea of fraud setup by the plaintiff. Neither legally nor factually any case of fraud is made out in the facts and circumstances of the case. Learned Subordinate Judge has entertained irrelevant and impermissible evidence in inferring fraud on the part of the appellant.

24. In *Khagendra Nath Mahata vs. Pran Nath Roy* 29 LA. 99, Lord Robertson commenting on the facts of the case which led to setting aside of ex-parte decree observed :

.....These allegations are plainly an attack, not on the regularity or sufficiency of the service or the proceedings, but on the whole suit as a fraud from beginning to end.

25. In [Girish Chandra Jana Vs. Kalachand Maity](#) , a Division Bench of Calcutta High Court held "It is also settled law that mere falsity of claim and/or perjured evidence if non-service of summons be not proved will not support the action. The plaintiff, therefore, in a suit for setting aside an ex parte decree on the ground of fraud when he was unsuccessful in his application for setting aside the ex parte decree on the ground of non-service of summons must prove some kind of fraud, which affects the suit itself and not merely the regularity or sufficiency of the service or the proceedings, in addition to non-service of summons in order to obtain a decree."

26. In Jangal Chaudhary vs. Laljit Pasban, 1921 Patna Law Journal-1 (Vol. VI). Dawson Miller, C.J. held as follows :

.....In the present case the only fraud alleged is that in connection with the service of summons, and this question has been determined in the proceedings under Order IX, rule 13. It was further alleged in the plaint that the hand-notes sued upon were not genuine and did not bear the signatures or thumb- impressions of the respondents. It is not competent to the respondents, having failed in the original suit, to re-open by a subsequent action the very questions which were decided. The hand-notes were produced and proved by the appellant in the original suit and were accepted as genuine by the learned Judge. It is true that the suits were determined ex-parte but this is no reason why the respondents should be allowed again to re-open the matters there determined. [See In Re South American and Mexican Company (1895) 1 Ch.D., 37].....

x x x

I need only refer to the case of Ram Narain Lal Shaw vs. Tooki Sao (5 P.L.J., 259) in which the learned Judge from whose decision this appeal is brought took part. It was there decided that a suit to set aside an ex-parte decree, not on the ground that the plaintiff was prevented by any fraud on the part of the defendant from placing his case before the court, but on the ground that the defendant procured the decree by putting forward perjured evidence in his favour, is not maintainable.....

x x x

The whole case is before the court, which has decided it on the pleadings and on the evidence, and whether the case was a false one or not, and whether the evidence adduced is perjured evidence or not, the court must be held to have adjudicated on both these points and once having adjudicated, it cannot be asked to adjudicate again. In my opinion these suits are not maintainable and the appeals should be allowed with costs here and in the courts below.

27. In Mahanth Ramrup Goshain vs. Mahabir Shah (1923) ILR Patna 833, Mullick, J. held as follows :

.....It is clear that a subsequent suit can only be maintained if the plaintiff proves that, apart from the fraud alleged in the previous proceedings, there are other grounds of fraud which remain to be investigated; that is the purport also of the rulings upon which the defendant-appellant before us relies.....

The question, therefore, is what is the fraud that is alleged in the present suit? Giving the fullest margin to the learned Vakil for the respondent, it does not appear to me that the plaint is founded on any other ground of fraud than that in the matter of service of processes, and that being so, the suit, in my opinion, cannot lie.

The matter may be tested in another way. Supposing the suit is permitted to proceed, what will be the effect of the previous finding as to the service of the processes. It is contended on behalf of the respondent that the finding will not be res judicata although it may be strong evidence. Whether it is res judicata or not will depend upon the question whether a proceeding under Order IX, rule 13, Code of Civil Procedure, is a suit within the meaning of section 11 of the Civil Procedure Code. If it be held that the proceeding being a summary proceeding is not a suit then the rule of res judicata will not apply. In that case evidence will be adduced by the parties upon the question of service. What will be the effect of a finding in favour of the defendants that service was in fact made as found in the previous proceeding? In my opinion the finding will be a complete answer to the suit which will then have to be dismissed on the ground that the plaintiff, having been duly served with summons and not having appeared to contest the claim of the defendant No. 1, cannot now be heard to urge that the decree was improper unless he can show that by some contrivance on the part of the defendant he was prevented from placing his case fully before the Court. In other words he must show that owing to some subsequent overreaching on the part of the plaintiff he was prevented from showing that the claim was fraudulent. It will not be sufficient to say that the claim was unfounded because every invalid claim is not necessarily a fraud upon the Court.

(Emphasis added)

In the result, the decree under appeal is not sustainable and is accordingly set aside. This appeal is allowed and the plaintiff's suit is dismissed with cost. The Executing Court is directed to proceed with the execution of the decree of the Calcutta High Court.