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(1925) 12 CAL CK 0001

Calcutta High Court

Case No: None

Radha Kissen Goenka APPELLANT

Vs

Thakursidas Khemka RESPONDENT

Date of Decision: Dec. 14, 1925

Citation: AIR 1926 Cal 713

Hon'ble Judges: Sanderson, C.J; Rankin, J

Bench: Full Bench

Judgement

Rankin J.

1. (His Lordship after setting out the facts proceeded as follows.) To begin with, the claim for interest was denied and it is entirely a wrong practice under Ch. 13A. for a learned Judge to order security merely because looking at the statements on either side he rather thinks that the plaintiff has a better prospect of success than the defendant. There was a specific denial with respect to this agreement and it would be quite impracticable to decide that matter under Ch. 13A.

2. As regards the main question, it is clear that the plaintiff was an accounting party and though he gave a version of an adjustment, he did not profess to be at all sure that it amounted to a promise by the defendant to pay the sum so ''found because he submitted that it amounted to an adjusted account and he asked for an account by way of an alternative relief.

3. So far, therefore, it seems to me that this case is one in which the proper order would have simply been an unconditional leave to defend; but it appears that at the last stage of the summons the parties appeared before the learned Judge and the learned Counsel for the defendant is recorded to have said that he consented to a decree for Rs. 15,000 "which he contended was the principal sum due." If that Rs. 15,000 had been offered as the purchase price of peace in settlement of the whole matter, it could not have been taken as an admission for any purposes of this sort; but it certainly looks as though that was the defendant''s statement of the amount

that he really owed. There may be some doubt about the minuted, and we have enquired to-day as to what figure the defendant admits. We are told that he admits at any rate Rs. 13,000.

4. It seems to me, therefore, that one may on this summons give judgment against the defendant for Rs. 13,000; but it is to be observed that a part of the plaintiff''s relief which he seeks by going on with the action is an order for sale of the security. Under the practice of Ch. 13A it is one thing to give judgment for a given sum and it is another thing to say whether that judgment should be immediately enforceable having regard to other matters outstanding between the parties.

5. It seems to me that the order of the learned Judge (a part of which as regards the sale of these properties is entirely without jurisdiction under Ch. 13 A) should be altogether set aside and that the proper order to make is that the plaintiff on this application should have judgment for Rs. 13,000, but, that this judgment is not to be executed pending the final determination of the other matters in the suit. The defendant must have to defend as regards the rest of the claim.

Sanderson, C.J.

6. I agree. As regards costs, we are of opinion that the plaintiff must pay the defendant''s costs of the appeal, and there will be no cost of the summons before my learned brother on the original side.

7. The defendant must file his written statement by Friday next and there will be cross-order for discovery within a week of the finding of the written statement.

8. This case will be put in the special list of suits.