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Sheik Basiruddin Vs Sheik Sadhu Tanti

None

Court: Calcutta High Court

Date of Decision: Feb. 18, 1918

Citation: 45 Ind. Cas. 690

Hon'ble Judges: Walmsley, J; Richardson, J

Bench: Division Bench

Judgement

Richardson, J.
The petitioner in this Rule brought a suit against the opposite party and others. In that suit a petition of compromise was

filed, to which the opposite party was apparently a party. Accordingly a consent decree was made founded on the petition. When the petitioner

took steps to execute the decree, the opposite party applied to the trial Court to set aside the decree on the ground that as against him it was an ex

parte decree. The learned Munsif on the merits refused the application. The opposite party then appealed to the District Judge, who took a

different view of the facts and set aside the decree by hia order of the 4th January 1918. That order is the subject-matter of this Rule. It is

contended that the proceedings were not proceedings under Order IX, Rule 13, as they purport to be and that the appeal was incompetent.

2. Now it is not disputed that it was open to the opposite party to apply to the trial Court to set t aside the compromise decree on the ground that

he was no party thereto and that he had given no authority to file the petition of compromise. The question is, what is the nature of such an

application. Is it an application to the Court in its inherent jurisdiction or is it an application within the scope of Order IX, Rule 13. It appears to

have been held in the cases of Koroona Moyee Dossee v. Nubo Kishore 6 W.R. Mis. 36 and Bholai Naskar v. Alach Naskar 3 C.L.J. 158. that

it is open to the Court to deal with such an application as an application to set aside an ex parte decree. The case of Hemmo Mayee Dayee v.

Watson and Co. 14 W.R. 299. has perhaps an opposite tendency but that case was distinguished in the case of Bholai Naskar v. Alach Naskar 3

C.L.J. 158. The subsequent case, however, of Damodar Misra v. Hirnashi Naik 27 Ind. Cas. 227 : 19 C.W.N. 118. is in direct conflict with the

decision in Bholai Naskar v. Alach Naskar 3 C.L.J. 158. It was held in Damodar Misra''s case 27 Ind. Cas. 227 : 19 C.W.N. 118 that a petition

to set aside a consent decree, obtained in circumstances similar to those which exist in the present case, could not be treated as a petition under

Order IX, Rule 13. Speaking for myself, if there had been no previous decisions, I should have preferred to adopt the view expressed in that case

by Mr. Justice Stephen and Mr. Justice Mullick. The previous cases, however, were apparently not brought to their notice. There is also this to be

said that the case of Bholai Naskar v. Alach Naskar 3 C.L.J. 158 has been cited with approval in the subsequent cases of Kunjo Behari Ghose v.

Durgamoni Dassi 3 C.L.J. 160 . and Golab Koer v. Badshab Bahadur 2 Ind. Cas. 129 : 130. W.N. 1197 : 10 C.L.J. 420 . In the circumstances

regard being had to the state of the authorities on a question which is one of procedure and not of principle, I think we ought to follow the decision

in the case of Bholai Naskar v. Alach Naskar 3 C.L.J. 158. If the application to the Munsif was capable of being dealt with under Order IX, Rule

13, then an appeal lay to the District Judge from the Munsif''s order rejecting the application and the District Judge''s order cannot be successfully

challenged on the merits. We cannot go behind the District Judge''s finding.

3. The result, therefore, is that this Rule must be discharged with costs, one gold mohur.

4. Walmsley, J.--I agree that the Rule should be discharged. I only wish to add that I do not share my learned brother''s preference for the view

expressed in the case of Damodar Misra v. Hirnashi Naik 27 Ind. Cas. 227 : 19 C.W.N. 118.