

Jogesh Chandra Deb Vs Profulla Nalini Dasi

Court: Calcutta High Court

Date of Decision: May 2, 1950

Acts Referred: Civil Procedure Code, 1908 (CPC) – Order 9 Rule 9, 151, 2(2)
Court Fees Act, 1870 – Section 8D(1), 8D(2)

Citation: (1951) 1 ILR (Cal) 642

Hon'ble Judges: Sen, J; Chunder, J

Bench: Division Bench

Advocate: Hiralal Chakravarti and Amiyakumar Mookerji, for the Appellant; Syama Charan Mitter and Bhabes Chandra Mitra, for the Respondent

Judgement

Sen, J.

The facts leading to the issue of this Rule briefly are as follows:

The Plaintiff instituted a suit for a declaration of title and confirmation of possession with respect to a jalkar and he put a certain valuation on his

suit. The Defendants objected that the valuation was too small. The court agreed with that view and ordered that there should be an investigation

as to the correct value of the subject-matter of the suit and directed that a commissioner should be appointed for local investigation. The court

further directed that the commissioner's fees should be deposited by the Plaintiff within a certain time. The fees were not deposited by the Plaintiff

within a certain time. The fees were not deposited, although several opportunities were given to the Plaintiff to deposit the same. The last date for

depositing the fees was May 24, 1948, but the Plaintiff took no steps and the order passed by the learned Munsif was that the suit was dismissed.

Thereafter, an application was filed praying that the order of dismissal be set aside on certain grounds.

It was alleged inter alia that, on the date fixed for depositing the commissioner's fees, the tadbirkar of the Plaintiff was ill and therefore, it was not

possible for him to take any steps. The application for setting aside the order of dismissal purported to be one under Order IX, Rule 9 of the Code

of Civil Procedure. The learned judge who heard the application held that Order IX, Rule 9 of the code had no application, inasmuch as the order

of dismissal was not passed on the ground of default of appearance by the Plaintiff. From the order passed by the learned Judge, it appears that

the pleader for the Applicant asked the learned judge to invoke the residuary powers, which were preserved to the court by Section 151 of the

CPC and contended that the court should exercise those residuary powers in favour of the Applicant. The learned judge, however, held that the

order of dismissal was an appealable order and that consequently there was no scope for exercising any inherent jurisdiction, as the code provided

a specific remedy. On these findings, he dismissed the application. Against this order the present rule has been obtained.

2. We entirely agree with the learned judge that Order IX, Rule 9 of the code has no application whatsoever in the present case. The suit has been

dismissed, not on account of any default of appearance by the Plaintiff. The court has exercised the powers given to it by Section 8D(2) of the

Court-fees Act. Section 8D(2) is in the following terms:

The court may, from time to time, direct such party to the suit, as it thinks; fit, to deposit such sum as the court thinks reasonable as the costs of the

inquiry and if the costs are not deposited within such time as the court shall fix, may, notwithstanding anything contained in any other Act, dismiss

the suit, if such party is the Plaintiff or the Appellant and in any other case, may recover the costs as a public demand.

3. Section 8D(1) refers to the issue of a commission for making a local investigation in connection with valuation. The order passed by the learned

Munsif was, therefore, clearly an order which he could have passed u/s 8D(2) of the Court-fees Act.

4. The question which arises now is whether such an order of dismissal is appealable. In order to determine this point I must decide whether the

order of dismissal amounts to a decree. In my opinion, it does not amount to a decree. "Decree" has been defined in Section 2(2) of the Code of

Civil Procedure, as meaning-the formal expression of an adjudication which conclusively determines the rights of parties with regard to all or any of

the matters in controversy in the suit. Now, the question of payment of commissioner's fees was not a matter which was in controversy in the suit

and the dismissal of the suit for nonpayment of the commissioner's fees does not amount to a formal expression of the court regarding any matter in

controversy in the suit. It is quite unnecessary for us to consider whether this order passed under the provisions of Section 8D(2) of the Court-fees

Act amounts to an order of dismissal for default. It is quite sufficient to say that the order of dismissal is not a decree within the meaning of Section

2(2) of the Code of Civil Procedure. Learned advocate for the opposite parties contends that the order of dismissal really amounts to the rejection

of a plaint and that, consequently, it should be deemed to be a decree, as Section 2(2) of the code states that a decree shall be deemed to include

the rejection of a plaint. Were it not for this specific provision in Section 2(2) of the Code of Civil Procedure, the rejection of a plaint would not fall

within the definition of a ""decree"", but the legislature thought fit to include the rejection of a plaint in the category of decree, stating that a decree

shall be deemed to include the rejection of a plaint. The order passed by the learned Munsif is an order dismissing the suit; it is not an order

rejecting a plaint. Section 8D(2) of the Court-fees Act says nothing about rejecting a plaint. It says that the court may dismiss a suit. We see no

reason to hold that the order dismissing a suit amounts to an order rejecting the plaint and therefore, comes within the definition of ""decree"" as

contained in Section 2(2) of the code. We do not think we should enlarge the scope of the definition of ""decree"" in this unwarranted manner. We,

therefore, hold that the order of dismissal of the suit is not a decree and that no appeal lay. The learned judge was, therefore, wrong in his view that

an appeal lay. Acting under this erroneous view he refused to exercise jurisdiction which he had by reason of the provisions of Section 151 of the

Code of Civil Procedure.

5. We, therefore, set aside the order of the learned judge and direct that he will investigate the question whether the Plaintiff had any justification

for not depositing the court-fees on May 25, 1&48. The parties will be allowed to adduce such evidence as they think proper regarding this matter

and the court shall after considering such evidence if given, decide the question in accordance with law and in the light of the observations made

above.

6. The costs of this Rule, in our opinion, should be paid by the Petitioner, inasmuch as the record shows that the Petitioner has been dilatory on

several occasions. The costs of all subsequent proceedings are left to be decided by the court below.

7. The Rule is disposed of in the above terms.

Chunder, J.

8. I agree