

Jadav Chandra Moulik Vs Manik Sarkar

Court: Calcutta High Court

Date of Decision: Jan. 16, 1919

Citation: 51 Ind. Cas. 652

Hon'ble Judges: Walmsley, J; Ernest Fletcher, J

Bench: Division Bench

Judgement

Ernest Fletcher, J.

This appeal is preferred by the plaintiff against a decision of the learned District Judge of Rungpur, dated the 1st March

1917, confirming a decision of the Munsif at Kurigram. The plaintiff sued the defendant for rent. The matter in dispute between the parties was the

rate of rent. There was a former litigation between the parties on the same point which came up to this Court and this Court, on the 28th February

1917, took the view of the plaintiff on the matter. On the 1st March 1917 the learned Judge in the lower Appellate Court delivered his judgment,

without knowing that the judgment in the former suit had been delivered by this Court on the day previous, following the decision of the lower

Appellate Court in the former suit. The plaintiff now comes on appeal here. It appears that the records before the lower Appellate Court did not

contain the judgment of this Court of the 28th February 1917. It is quite obvious that the proper course to adopt in the circumstances was to apply

to the Judge of the lower Appellate Court for a review of his judgment on the ground of discovery of new and important matter, namely, the

judgment of the High Court, which was delivered on the 28th February 1917 which reversed the judgment of the lower Appellate Court in a

former suit and having failed to apply for a review of judgment, he cannot now have the whole proceedings set aside and to have additional

evidence admitted in second appeal. I think that in a case in which the plaintiff deliberately abstained from applying for a review of judgment, we

ought not to interfere with the judgment of the Court below.

2. The present appeal, therefore, fails and must be dismissed with costs.

Walmsley, J.

3. I agree.