(1868) 01 CAL CK 0002

Calcutta High Court

Case No: Special Appeal No. 1395 of 1866

Bindabun Chunder Roy and Another		APPELLANT
	Vs	
Shamachurn Chuckerbutty and Others		RESPONDENT

Date of Decision: Jan. 30, 1868

Judgement

Sir Barnes Peacock, Kt., C.J. and Kemp, J.

(After stating the facts as above, and observing of the action of the Sudder Ameen with reference to the second question that "having admitted the review, it appears to me that he very properly acted upon the exposition of the law by the Full Bench, because at the time when he reheard the case he was bound to act upon the law as laid down by the Full Bench case, which did not alter the law as it existed at the time when the cause of suit arose, but amounted merely to a new exposition of the law itself," continued)--With regard to the second question, I have already expressed my opinion that, if the Sudder Ameen was right in admitting a review, he was right in acting upon the new exposition of the law. The only remaining question then is whether the Sudder Ameen was right in admitting the review after the expiration of the ninety days; and, if he was wrong, whether the Principal Sudder Ameen or this Court can deal with this decision. That, as it appears to me, depends upon the construction of Act VIII of 1859, Ch. xi. The sections principally bearing on the case are 377 and 378. S. 377 says:-- "The application shall be made within ninety days from the date of the decree, unless the party preferring the same shall be able to show just and reasonable cause, to the satisfaction of the Court, for not having preferred such application within the limited period." S. 378 says:-- "If the Court shall be of opinion that there are not any sufficient grounds for a review, it shall reject the application; but if it shall be of opinion that the review desired is necessary to correct an evident error or omission, or is otherwise requisite for the ends of justice, the Court shall grant the review; and its order in either case, whether for rejecting the application or granting the review, shall be final."

2. Now it appears to me that, in substance, there are two orders in this case:-- First, the order that the application shall be received; and, secondly, the order granting the review. We are now dealing with the first order, which, although not formally drawn up, is substantially included in the case. S. 363 of the Act says, that "no appeal shall lie from any order passed in the course of a suit, and relating thereto, prior to decree; but if the decree be appealed against, any error, defect, or irregularity in any such order affecting the merits of the case or the jurisdiction of the Court, may be set forth as a ground of objection in the memorandum of appeal." It appears to me that the order admitting the application after the ninety days was an order prior to the decree upon the rehearing of the case upon review, and therefore, that under s. 363, that order was appealable, unless s. 377 has left it wholly to the discretion of the Court to admit a review after the expiration of ninety days, whenever that Court shall think a reasonable excuse for the delay is made out. It is suggested by my colleague by my side that there was no ground of appeal before the Principal Sudder Ameen, that the Sudder Ameen was wrong in admitting the review after the expiration of ninety days; but the Principal Sudder Ameen, although there was not that ground of appeal, did expressly decide the case upon that point, as well as upon others. Sitting here upon appeal from the decision of the Principal Sudder Ameen, and for the purpose of doing justice, we must, deal with the case as if the Principal Sudder Ameen had allowed the grounds of appeal before him to be amended, and an additional ground of appeal inserted, namely, that the Sudder Ameen was wrong in admitting the review after the expiration of ninety days without sufficient cause, and then his judgment would have been founded upon that ground of appeal. Therefore I think this case properly comes before us, although there was no special ground of appeal to the Principal Sudder Ameen that the decision of the Sudder Ameen was wrong in admitting the review.

3. Then come the questions:-- "First, was there just and reasonable cause for not having preferred the application within the limited period? Secondly, can this Court look to the reasonableness or sufficiency of the cause, or is that question left wholly and entirely to the discretion of the Court to which the application for review is made? Now it appears to me that it would be very dangerous to leave the justness and reasonableness of the excuse for the delay to the discretion of the lower Courts. It is a ground of the greatest importance that decisions which have been passed for many years should not he opened unless some sufficient ground be shown for the delay in not having applied earlier. In a case before the Privy Council -- Maharajah Moheshur Sing vs. The Bengal Government --one of the points was whether the Commissioners of Revenue were right in admitting a review of a decision in a resumption suit after the expiration of ninety days without sufficient cause. The Lords of the Judicial Committee treated the admission of a review after the expiration of three months, which was the time allowed by the Regulation XXVI of 1814, as an interlocutory order. At p. 302, they say:-- "Before we enter into the particulars of that question, we deem it right to notice an objection which was taken

at the bar on the part of the respondents, that it was too late now to impugn the regularity of the proceeding to grant the review; that if the appellant deemed himself aggrieved by it, he ought to have appealed at the time; and that he was too late in doing so after a decision had been pronounced against him. We are of opinion that this objection cannot be, sustained. We are not aware of any law or Regulation prevailing in India which renders it imperative upon the suitor to appeal from, every interlocutory order by which he may conceive himself aggrieved, under the penalty, if he does not so do, of forfeiting for ever the benefit of the consideration of the Appellate Court."

4. The Judicial Committee thought that the appellant was in time, after the decree had been passed on the review, to take objection that the Court was wrong in admitting the review after the expiration of three months without reasonable cause. The words of Regulation XXVI of 1814, so far as they refer to the admission of the review after the expiration of the time limited, are almost identical with those of s. 377 of the present Civil Procedure Code. The second clause of s. 4 directs that the petition for review shall be presented within three calendar months. This provision, however, admits of an exception, by providing that, if the parties preferring the same shall be able to show just and reasonable cause, to the satisfaction of the Court, for not having preferred such application within the limited period, such review will be allowed. The Privy Council did not think that the words "to the satisfaction of the Court," would prevent them from looking into the grounds which were urged as an excuse for the delay. The Lords of the Judicial Committee say:-- "It necessarily follows that if the review was granted without due regard to the Regulations governing such proceedings, it, and all that has been done under it, must fall to the ground." That is at p. 309. It appears to me that that case is similar to the present, and that the words to which our attention has been called in s. 378, viz., "its order in either case, whether for rejecting the application or granting the review, shall be final," are applicable only to the order for rejecting the application or granting the review, and not to the decision as to whether there was just and reasonable cause for allowing the application to be made after the period of ninety days mentioned in s. 377.

5. Now, let us see what would be the consequence of holding that the new decision, or the new exposition of the law by the Full Bench, was a sufficient excuse for not having applied for the review of judgment within the period of ninety days. If it was a sufficient excuse for not having applied within the period of ninety days, it would be a sufficient excuse for applying to review every judgment which has been given on resumption suits within the last fifty years, and consequently almost all the titles which depend upon decrees in resumption suits would be altogether upset; because, if we hold that there were sufficient grounds to apply for a review of this judgment in consequence of that decision, we must also hold that there would be sufficient ground for applying for the review of every judgment of the same character which has been passed within, the last fifty years. No title, therefore,

would be safe which depends upon a decree in a resumption suit. The Judicial Committee of the Privy Council say upon that point:-- "Let us now address our attention to the Regulations which have been passed relative to the question of granting a review. It must be borne in mind that a review is perfectly distinct from an appeal; it is quite clear from the Regulations that the primary intention of granting a review was a consideration of the same subject by the same Judge, as contradistinguished to an appeal, which is a hearing before another tribunal. We do not say that there might not be cases in which a review might take place before another and a different Judge, because death or some other unexpected and unavoidable cause might prevent the Judge who made the decision from reviewing it; but we do say that such exceptions are allowable only eve necessitate" In this case, there was the exception; for the Sudder Ameen who had passed the decision had left the Station, and a new Sudder Ameen had been put in his place. The Judicial Committee goon to say:-- "We do say that, in all practicable cases, the same Judge ought to review; and that, for the attainment of that object, expedition in presenting a petition for the review is indispensable, and the only practicable course for attaining that end by accelerating the hearing of the review before accident or unexpected events shall have removed the original Judge. Looking at all these circumstances, we should naturally expect to meet in the Regulations upon this subject such provisions as would prevent the evils necessarily incidental to delay and procrastination;" see p. 304. In another part of their judgment they say (p. 308):-- "We are of opinion that for granting a review in the cases we have just supposed to exist, the causes accounting for the delay, and intended to justify the grant of a review, ought to be of grave importance." At p. 303, they say:-- "Before considering whether the review was granted in conformity with the Regulations, lot us look a little to the principles upon which we think lapse of time is a most important consideration. In the present case, live years and a half had passed away since the original decision. Surely, whatever may be the true import of the Regulations, the parties interested in the decision which had been made, were entitled, after the lapse of a sufficient period, no appeal having been asserted or petition for a review presented, to conclude that the Government acquiesced in what had been done by the Special Commissioners, and, in that rational conviction, to deal with the property upon the footing of the past decision."

6. Now it appears to me that all the principles to he deduced from the case to which I have referred are equally applicable to the present case, and that a new exposition of the law was not a just and reasonable cause for not having presented the review within the ninety days required by law. The new construction of the law might be a ground for review, but it was no excuse for not having applied before. If it was, cases which have been decided and acted upon for fifty years might be reopened, which never could have been intended.

7. I think the review in this case ought not to have been admitted, and that we must follow the course which the Privy Council did in the case to which I have alluded, and

hold that if the review was granted without due regard to the provisions of 3. 377, it, and all that has been done under it, must fall to the ground.

8. I am of opinion that there was no just and sufficient cause for not having preferred the application for a review within the limited period, and that the Sudder Ameen by hearing the review after the limited period did not preclude a Court of appeal from enquiring whether the excuse for the delay was sufficient.

9. There was a case in this Court Gunganarain Roy v. Gonomoonee, 8 W.R., 184 in which Pundit and Glover, JJ., differed in opinion as to whether a decision which had been passed upon a rehearing under a review (the review having been granted after the expiration of ninety days, and the Judge having given no reason for the admission of the review), could be interfered with by this Court. Pundit, J., thought that, under ss. 377 and 378, the decision of the Court admitting the review was final, although he gave no reasons for admitting it after the expiration of the ninety days. On the other hand, Glover, J., thought that an appeal would lie from the decision which took place on the hearing on review, and that the question whether there was reasonable cause for the delay or not might be enquired into by this Court. The case was referred to a third Judge, and came before me, and I concurred with Glover, J., that the fact of the Judges having admitted the review after the ninety days was not conclusive upon this Court that there was sufficient excuse for the delay. I thought that the Principal Sudder Ameen was not authorized to enter into the ground for granting the review, until he was satisfied that there was reasonable cause for the delay.

10. If the Sudder Ameen had the power to admit a review in this case, his successor might review his judgment twenty years hence, and any Principal Sudder Ameen would have power to review a decision passed by his predecessor twenty years ago, without any cause for the delay in making the application being shown, and without pledging himself that the cause, if any, assigned for the delay is, in his judgment, sufficient. If such were the case, there would be an end to all finality in litigation. I am of opinion that an application for a review cannot be properly admitted after the limited period, unless there is just and reasonable cause for the delay, and that a decision as to what is just and reasonable cause for admitting an application for review after the prescribed period of ninety days is one upon which an appeal will lie.

11. As to the second ground, I have already stated that, in my opinion, when a review is properly granted, the case, upon the rehearing under the review, ought to be decided according to the last exposition of the law by a Full Bench.

12. As nothing remains to be done by the Full Bench, I may state that my opinion now is that this appeal, which has been preferred against the decision of the Principal Sudder Ameen, must be dismissed, upon the ground that the Principal Sudder Ameen was right in holding that there was no sufficient cause for admitting

the review after the expiration of the ninety days.

13. The special appeal is accordingly dismissed with costs.

Jackson, J.

14. I entirely concur with the Chief Justice upon the two questions referred by the learned Judges of the Division Court.

15. The second of these questions is extremely simple; and, for the reasons stated by the Chief Justice, I am of opinion that when the review had been once admitted by the Sudder Ameen (and the sufficiency of the cause for which he admitted the review is not a matter for the consideration of any Appellate Court), then, undoubtedly, he would be right in deciding the case that was again before him for decision according to the exposition of law then governing the Courts.

16. The first question is one of somewhat more difficulty. Applications for review presented to the Court after the expiration of nicety days stand upon wholly different grounds from applications presented within the ninety days. When presented within ninety days, they are presented as of right, and the Court has then to apply itself only to the reasons which the petition contains for review of judgment; but when presented after ninety days have expired, quite an independent question presents itself in the first place for the decision of the Court, namely, whether the putties have shown a just and sufficient cause, to the satisfaction of the Court, for the delay which has taken place. It appears to me that the decision of the Court upon that point stands quite apart from the decision under s. 378, and that it is a matter which is for the consideration of an Appellate Court, if an appeal should be afterwards made from the decree. It seems to me that an order mode upon that case comes clearly within the terms of s. 363 as an interlocutory order. It was so regarded by the Privy Council in the case to which the Chief Justice has referred, and is, therefore, clearly one to which objection may be taken on appeal against the final decree.

17. Then it is said that no ground of appeal upon this point was presented to the Principal Sudder Ameen. It appears to me that this is wholly immaterial, not only for the reasons given by the Chief Justice, but also because, by s. 334, it is provided "the appellant shall not, without the leave of the Court, urge or be heard in support of any other ground of objection; but the Court, in deciding the appeal, shall not be confined to the grounds set forth by the appellant." It is therefore entirely within the competency of the Court to take into its consideration anything in the case which either affects the regularity of the proceedings of the Court below, or relates to the correctness of the decision upon the merits. It appeal''s to me, therefore, that the Principal Sudder Ameen was entirely competent to take up this point, and to dispose of it on the appeal.

18. I am of opinion that if the Sudder Ameen had entertained this petition of review presented after the expiration of ninety days, without stating that any just or sufficient cause had been shown, to his satisfaction, for the delay, I think that then the order would have been absolutely bad, and all that would have been done under it would fall to the ground.

19. I also think that if good and sufficient reason had been shown, and that reason had been such as the Appellate Court could not approve, the Appellate Court would be justified in setting it aside. I further think that the reason assigned in this case, namely, the promulgation of a new interpretation of the law, was not a good and sufficient cause for admitting or entertaining the application for review after the lapse of ninety days.

Macpherson, J.

20. I think that ss. 377 and 378 of Act VIII of 1859 must be read separately. The words in s. 378, which declare that "the order, whether for rejecting the application or granting the review, shall be find," must be read as applying solely to the application under s. 378, and not to the application under s. 377, which last section relates only to the question of the time at which the Court is first asked to review its judgment. I concur in the order dismissing the appeal.

Glover, J.

21. I concur generally in the judgment of the learned Chief Justice. It appears to me, on further consideration, that ss. 377 and 378 of the CPC refer to different things, and ought not to be read together, and that an order passed under the first-named section is an interlocutory order, which is subject to appeal--Maharaja Moheshur Sing v. The Bengal Government 7 Moore''s I.A., 283. And if this be so, the Principal Sudder Ameen''s finding on the question as to whether there was just or reasonable cause for receiving the application for review after ninety days had elapsed, was a question of fact with which there would he no interference possible in special appeal. It does not seem to me necessary to go further than to declare that the first Court''s decision as to what is "just and reasonable cause" is open to appeal. This was the question referred to the Full Bench. And I do not think that, under the circumstances of this case, we are called upon to say whether the Principal Sudder Ameen''s opinion as to the sufficiency or otherwise of the Munsif''s reasons was a good one or not. As the second point referred has been given in favor of the opinion expressed in the referring order, I have only to say that, on this point, I concur with the learned Chief Justice.

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[1] See Ajonnissa Bibi Vs. Surja Kant Acharji ; Mowri Bewa v. Surendranath Roy, id., 184, note; Asrafannissa Begum Vs. Syad Inaet Hossein ; Mahomed Gazi Chowdhry v. Srimati Dullab Bibi, id., 318, note; Bhyrub Chunder Surmah Chowdhry and Another Vs. Madhubram Surmah Alias Madhub Chunder Surmah and Others ; Nudarchund

Bhooya v. Reedoy Mundid, id., 424, note; Nolita Mokun Roy Chowdhry v. Drnvanath Mookerjee, id., 427, note; and Khelut Chunder Ghose v. Prankisto Day, id., 428, note.

[2] See Tarini Charan Ghose Vs. Satto Saran Ghosal Bahadur .

[3] See Nizamat Ali v. Ramesh Chandra Roy, 3 B.L.R., A.C., 78.