
(1872) 09 CAL CK 0001

Calcutta High Court

Case No: Special Appeal No. 265 of 1872

Joy Koomar Dutta Jha

APPELLANT

Vs

Esharee Nund Dutta
Jha

RESPONDENT

Date of Decision: Sept. 6, 1872

Judgement

Kemp, J.

A preliminary objection has been made by the Advocate-General, who appears for the special respondent, to the hearing of this appeal. He contends, first, that an order rejecting an application for the admission of a special appeal is not open to review, second, that in the present case the Court has reviewed its order without giving notice to his client. The original application for the admission of the special appeal was filed in proper time; it was rejected on an ex parte hearing on the 12th of July 1871. On this Mr. Money applied to the Court to re-consider its order; and the Court, after hearing Counsel, and being satisfied that there was good and sufficient reason for so doing, on the 2nd December 1871, directed the application to be registered.

2. Previous to the passing of the new rules which regulate applications for the admission of a special appeal, parties could, as a matter of right, file a special appeal; and in the event of their appeal being unsuccessful, they could apply for a review, and that too more than once. The new rules do not and cannot take away this right, and we find that this Court has recognized such a right in cases where an application for the admission of a special appeal has been rejected--In the matter of the Petition of Barmutollah Ante, p. 156.

3. Then it is said that, under s. 376 of Act VIII of 1859, applications for review can only be made of a decree of a Court, but it has been held by a Divisional Bench, in the case of *Cochrane v. Heera Lal Seal* 7 W.R., 79 that this Court has power to review an order. Lastly, it was contended by the Advocate-General that, under s. 378 of Act VIII of 1859, no review of judgment can be granted without previous notice to the opposite party to enable him to appear, and be heard in support of the decree of which a review is

solicited. Now, in the case before the Court, there could be no opposite party. The first application for the admission of a special appeal was necessarily ex parte, as also was the second application praying the Court to re-consider its order rejecting the first application. We overrule the preliminary objection, and proceed to try the special appeal.

(1) Before Mr. Justice Bayley and Mr. Justice Markby.

In The Matter of The Petition of Barmutollah.

The 4th April 1872.

Mr. M. Ghose for the petitioner.

Tea judgment of the Court was delivered by

Markby, J.--In this case an application for the admission of a special appeal was made to this Court on the 19th December last. The petition contained ten grounds of appeal; and after hearing a pleader in support of the application, it was rejected by two Judges. There id now presented to us an application for a review of the order passed rejecting the application to admit the special appeal, treating that rejection as a judgment to which Ch. xi of the Code of Civil Procedure, relating to reviews, is applicable. The application for review contains four new grounds of special appeal in addition to the ten old ones; and, if it were the first application to admit a special appeal, it would be too late.

Assuming the rejection of the application to admit a special appeal to be a judgment which may be reviewed, we think we ought still to consider whether we ought to entertain the application for review. It is not suggested that there is anything peculiar or exceptional in this case, or that there has been any new discovery since the case was last heard; or that there has been any miscarriage by the Court; or that the case put forward on the last occasion was not correctly understood and disposed of. It is only said that "the real ground of special appeal in this case was not properly and expressly put forward on the last occasion, though it appears from the old grounds that there was some allusion to them." In short, it comes to little more than this that the case having been once argued by a vakeel of long standing and great experience, another advocate now states that he can pat the applicant's case more forcibly. I entirely admit that this Court has a discretion to admit applications for review in any case in which it considers that it is desirable for the ends of justice to do so; but I also think it has a discretion before it is called upon to hear a case re-argued, which has been already once determined, to require some explanation to be given why this exceptional course should be followed; and I think that such a statement as that which is made in this case does not amount to such an explanation as we are entitled to require. Mr. Ghose contends that we ought to hear his argument in support of the application to admit the special appeal, in order to see whether the ends of justice require that a review should be granted. But that evades the whole question. If we are bound to hear his application, in order to see whether it ought to be granted, it is

obvious that every application to admit a special appeal may be made, and must be heard as many times over as the parties choose to present a petition for review, for it has been held by this Court that there is no limit to the number of applications for review. Tomorrow we may have a third advocate, who thinks he can put the case more forcibly than Mr. Ghose, the next day a fourth, who thinks he can put it more forcibly still, and so on ad infinitum. The power of review is a most valuable one if properly exercised, but it would be a grievous injustice to the large number of suitors who are waiting to be heard, if we were to allow parties, who have once had a fair opportunity of appearing and placing their case before the Court, to come up over and over again, in order to try and put their case better. The petitioner in this case has had three, distinct hearings in three different Courts and I think that, in the absence of any special circumstances, we may assume that his case has been sufficiently investigated. I may add that, whilst this case has been under consideration, I have sat to hear an application for review with L.S. Jackson, J., and he expressed in that case similar views to those which I have expressed here, in which I concurred.