(1872) 07 CAL CK 0004

Calcutta High Court

Case No: Appeal, No. 271 of 1864

Gurudas Roy		APPELLANT
	Vs	
Panchanan Bose and Another		RESPONDENT

Date of Decision: July 30, 1872

Final Decision: Dismissed

Judgement

Markby, J.
This is an application under s. 376 of the Civil Procedure Code, for admission of a review of a judgment passed in the year 1864 by two Judges of this Court, of whom one is no longer a member of the Court, and the other is absent in England. S. 377 provides that "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."

2. Now it appears that a suit was brought against the present applicant and four other defendants, and in respect of twelve or thirteen different properties this applicant being concerned only with one. The main point in dispute was whether a certain deed, under which the plaintiff claimed--how is not now material--was fraudulent and collusive; and the first Court dismissed the plaintiff"s suit, finding the deed to be so. On the appeal of the plaintiff, in which all the defendants were made respondents, this Court found the deed genuine. There upon one of the defendants, appealed to the Privy Council the present applicant and the other defendants not joining in the appeal; and the Privy Council has now reversed the judgment of this Court and has affirmed the decree of the first Court: and the result of the appeal to the Privy Council is the only ground laid before us as the "just and reasonable cause" why the application was not made within ninety days. If we were to grant this application, and were ultimately to admit the review, we should have to re-hear the appeal from the decision of the first Court, and consider whether or no we would affirm it; and obviously the object of this application is that, upon the question of

fact on which the decision has hitherto turned, we should alter the decision of the two Judges who decreed the appeal in 1864, by deciding in conformity with the decision of the Privy Council. Of course this present application assumes, and therefore we assume it also, that the decision of the Privy Council, which we have not seen, does not apply to the present applicant; and this Court would then have to consider how far the decree of the Privy Council, upon a matter of fact between other parties, was conclusive when the same question of fact came before this Court in another case. But it seems to me that we ought not to put this Court on any such embarrassing enquiry. I do not consider that any "just and reasonable cause" for the delay has been shown in this case; in fact, I do not think that any cause at all has been shown. It was open to the defendant, had he so chosen, to appear as an appellant before the Privy Council. There was but one suit, and he was a party to that suit, and the whole suit was carried before the Privy Council, and he had a right to appear in it; and if in consequence of not doing so, be has lost the benefit of the Privy Council decision, he has only himself to blame. We are referred to a decision of Kemp and Glover, JJ., in Satto Saran Ghosal Bahadur v. Tarini Charan Ghose. But in that case it appears that there were five separate suits, not one only, and one only was of the value which gave the party a right of appeal to the Privy Council. That alone is sufficient to distinguish that case from the present. But apart from that; it seems to me that it would give rise to considerable confusion and great inconvenience, if suits, which were considered to have been finally disposed of, could be opened by review after the lapse of several years from the date of decree upon the ground that in some other suit the Privy Council had come to a different decision. I think there is great force in the observation thrown out by Ainslie, J., in the course of the argument, namely, that in the years which have elapsed since the decree was given, the property may have been dealt with on the faith that the decree of this Court was a final one. If, therefore, I was called upon to say whether I concurred in the decision referred to, in Satto Saran Ghosal Bahadur v. Tarini Charan Ghose, I should, with the greatest respect for the two Judges who passed it, have considerable hesitation in saying that I do so.

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[1] 3 B L R, A C. 287