
(1875) 07 CAL CK 0001

Calcutta High Court

Case No: None

C. Fornaro and Another

APPELLANT

Vs

Ramnarain Sookder

RESPONDENT

Date of Decision: July 4, 1875

Judgement

Sir Richard Couch, Kt. C.J.

1. This case is referred to this Court under the provisions of the 7th and 8th section of Act XXVI of 1864. The 7th section obliges the Small Cause Court, in a suit of an amount exceeding Rs. 500, to reserve for the opinion of the High Court any question of law or equity, or any question as to the admission or rejection of any evidence as to which the Court shall entertain any doubt, or which they shall be requested by either party to the suit to reserve; and the 8th section provides that when judgment is given contingent upon the opinion of the High Court, the party against whom judgment is given shall, unless willing to submit to such judgment "forthwith" give security for the costs of the reference, and for the amount of the judgment. It was, I think, clearly the intention of the Legislature that the case should not be sent to this Court until the party against whom judgment was given had given the security here mentioned. Unless he did so, he was to be taken as submitting to the judgment, and it was the duty of the Small Cause Court, before sending the case to this Court, to see that the security was given. In the present instance this was not done, The First Judge of the Small Cause Court states the case, and causes it to be sent to this Court, appending to it a note that no costs of reference had been paid into his Court as security under s. 8 of Act XXVI of 1864. What was his object in making this note is not clear. Whether he intended, as possibly he did from what appears in the certificate that he afterwards gave to have it decided by this Court, what was the effect of not giving the security, there being, as he thought, some conflict of opinion, or to call the attention of this Court to the fact, that security had not been given, so that proper measures might be taken to enforce its being given is not quite apparent. But he ought, instead of sending the case in this manner, to have kept it until the security was given, and if it was not given within a time which came within the definition of the word "forthwith," he ought not to have

sent up the case.

2. As I have already said, instead of doing that, the Judge of the Small Cause Court has sent the case to this Court. And we have also received from him a certificate that the plaintiffs, on the 16th of December, tendered Rs. 280 as a security for the costs of the reference, and that he refused to accept it as being offered too late.

3. Having sent the case to us, I am not certain that he had power to accept the security, even if he had thought fit to do so, and that he had not by his conduct placed the matter in the hands of this Court. By sending the case, as he did, the plaintiffs may have been prejudiced, and led to suppose that it would be sufficient if they gave the security at any time; that the Judge of the Small Cause Court had shown that the direction that the security should be given was not to be insisted upon. From what he had done, it might be inferred that the plaintiffs did not submit to the judgment, and that the case was to be determined by the opinion of this Court. And this went on for a considerable time until apparently it came to be understood by the plaintiffs, or their advisers, that the security had not been given, and that there was thus a difficulty in the way of the case being heard, when they immediately offered the money. If the security be given now, the defendants will not be prejudiced by the delay. They will be in the same position as regards the having security for the costs as they would have been in if it had been first given. If there should be any question of allowance of interest or as to costs, we can take into consideration the delay which there has been in the plaintiffs giving security. On looking at the manner in which this case has been dealt with by the Judge of the Small Cause Court, we thought that it was a case in which we might allow the plaintiffs to appear, and argue the case upon the security being now given which was done to the satisfaction of the defendant's Counsel.

4. (The Court then proceeded to consider the questions referred, and gave its opinion in favor of the defendant, and continued.) The defendants are entitled to the judgment which has been given by the Judge of the Small Cause Court; that judgment will stand, and the defendants will have the costs of reserving the question and the costs consequent thereon. The sum deposited will be retained to satisfy them.