

(1936) 07 CAL CK 0030

Calcutta High Court

Case No: Civil Rule No. 1009 of 1936

Rajballav Mandal

APPELLANT

Vs

Rajendra Narain Mandal

RESPONDENT

Date of Decision: July 14, 1936

Judgement

R.C. Mitter, J.

In this matter a certified copy of the whole of the order-sheet of the Court below is attached to the petition. Statements made in the petition which is not supported by an affidavit contain facts no doubt, but all those facts appear from the certified copy of the order-sheet which is so annexed to the petition. The question, therefore, is whether an affidavit is necessary in support of the application. The relevant rules are Rules 7 and 9 of Part II, Ch. IV of the Appellate Side rules. The old Rules corresponding to the aforesaid Rules are Rules 3 and 4 of Ch. XII of the Appellate Side Rules published in the year 1902. The present rules, namely, Nos. 7 and 9, are almost verbatim reproductions of Rules 3 and 4 of the Old Appellate Side Rules. Rule 9 is in these terms:

It will not be necessary to set out in the application or in the affidavit any document which is a part of a record present in the High Court; nor will it be necessary to produce any affidavits of any facts found by the High Court or any of the lower Courts in the course of the suit or proceeding out of which the appeal arises: provided that such finding has not been reversed on appeal; but the application shall state shortly all facts upon which it is intended to rely, and shall give the number, letter, title or other description of all documents on the record present in the High Court, to which it is intended to refer.

Two Division Benches of this Court had to consider the effect of Rules 3 and 4 of Chapter XII of the Old Rules and it was held in those cases that where a petition to the High Court states facts which are matters of record and which are supported by copies of the order passed by the Court below attached to the petition, such a petition need not be supported by an affidavit. The cases are *Zamiran v. Fatch Ali* ILR

82 Cal. 146 (1904) and Musstt. Kariman v. A. H. Forbes 8 C.L.J. 308 (1905). In accordance with the decision in those two cases I do hold that as in the present case all the facts stated in the application are supported by the certified copy of the order-sheet which is attached to the application, no affidavit is necessary.