

(1919) 08 CAL CK 0031

Calcutta High Court

Case No: None

Promotho Nath Roy

APPELLANT

Vs

W.A. Lee

RESPONDENT

Date of Decision: Aug. 5, 1919

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Section 109(a)

Citation: 62 Ind. Cas. 216

Hon'ble Judges: Lancelot Sanderson, C.J; John Woodroffe, J

Bench: Division Bench

Judgement

Lancelot Sanderson, C.J.

This is an application by the defendant for a certificate that the decree of this Court, from which the appeal is sought to the Privy Council, involves a claim of Rs. 10,000 and that the appeal involves some substantial question of law.

2. A point was taken on behalf of the plaintiff that the decree of the High Court was not one "passed on appeal" within the meaning of Clause (a) of Section 109 of the Civil Procedure Code.

3. The order of Mr. Justice Greaves, against which the appeal was directed, was made on the 26th July 1918.

4. On the 30th August 1918, the last day of the sitting of the Court, at about 5 p.m., after the Court of Appeal had risen, an application was made to Mr. Justice Chaudhuri sitting on the Original Side for leave to file the memorandum of appeal, without a copy of the order against which the defendant desired to appeal.

5. The learned Judge granted leave to the defendant to file the memorandum of appeal, subject to any objection which might be taken on behalf of the plaintiff.

6. When the matter came before the Appeal Court, the plaintiff took the point that the appeal was out of time. The Appeal Court decided that the appeal was out of time, being barred by the Limitation Act, and the Court further refused an application u/s 5 of the Limitation Act to admit the appeal after the prescribed time and the appeal was dismissed with costs.

7. Having regard to the above-mentioned facts, I think we cannot hold that the order was not one "passed on appeal."

8. I do not think that, having regard to the facts of this case, it is covered by the case *Karsondas v. Gangabai* 32 B. 108 : 9 Bom. L.R. 566, which was cited by the learned Counsel, Mr. Mitter, on behalf of the plaintiff.

9. In that view, the decree was one of affirmance : there is no question as to the value of the subject-matter in dispute on appeal, and the only question is whether the appeal involves some substantial question of law.

10. The point raised on behalf of the plaintiff was that the order of the 26th July 1918 was made on the application of the defendant and that he could have applied to the Court for a copy of the order any day after the 26th July 1918 or that, at any rate, the defendant could have applied for a copy of the order, in default of the plaintiff applying within four days from the date of the order, in accordance with the provisions of Chapter 16, Rule 27, of the High Court Rules, Original Side, and that if the defendant desired to appeal against the order it was his duty to get the order drawn up in accordance with the rule.

11. On the other hand, the point raised on behalf of the defendant was that a period between the 7th August 1918 and the 3rd September 1918, should be excluded from the period of limitation as time requisite for obtaining a copy of the order.

12. Even if there is a question of law involved, I have considerable doubt whether there is any substance in it, having regard to the facts of this case, which are stated in my judgment in *Pramatha Nath Roy v. Lee* 52 Ind. Cas. 582 : 23 C.W.N. 553; but inasmuch as my learned brother is of opinion that there is a substantial question of law involved and my judgment is one of those from which it is desired to appeal, I do not press my view upon the matter, and I agree that a certificate should be granted.

13. The costs of this application will be costs in the appeal.

Woodroffe, J.

14. In my opinion there is a substantial question of law and a certificate should be granted.