

(1935) 02 CAL CK 0032**Calcutta High Court****Case No:** None

Purna Chandra De

APPELLANT

Vs

Naran Chandra De and Others

RESPONDENT

Date of Decision: Feb. 5, 1935**Acts Referred:**

- Civil Procedure Code, 1908 (CPC) - Order 47 Rule 1, 148

Citation: 168 Ind. Cas. 150**Hon'ble Judges:** Nasim Ali, J**Bench:** Single Bench**Judgement**

@JUDGMENTTAG-ORDER

Nasim Ali, J.

This Rule was issued at the instance of the plaintiff-appellant in S.A. No. 385 of 1932, upon the defendants respondents in the said appeal to show cause why the decree passed by this Court in the said appeal should not be reviewed.

2. It appears that on May 13, 1926, the petitioner instituted a suit for partition in respect of a certain house in the Court of the Subordinate Judge, Bankura. One of the defences taken by the defendants opposite parties was that the brothers and nephews of the petitioner were necessary parties to the suit. The trial Court held that the suit was not bad for defect of parties and decreed the suit in part. On appeal by the defendants to the lower Appellate Court the learned District Judge held that the brother and nephews of the plaintiff were necessary parties to the suit and in that view dismissed the suit. The plaintiff thereupon took a Second Appeal to this Court, viz. S.A. No. 385 of 1932. This Court, held that the suit was bad for defect of parties but on plaintiff's application to amend the plaint by adding his brother and nephews to the suit this Court on July 11, 1934, allowed the amendment on the following condition, viz:

"the plaintiff, however, must pay the costs decreed in favour of the defendants by the lower Appellate Court within a month from the date of the arrival of the record of the case in the trial Court. In default the appeal will stand dismissed with cost"

3. The amount of costs to be paid by the plaintiff was an ascertained amount specifically mentioned in the decree of the lower Appellate Court. The trial Court received the record on August 24, 1934. The learned Subordinate Judge on that day evidently under a misapprehension directed the plaintiff to pay only a portion of the costs decreed in favour of the defendants. On September 5, 1934, the plaintiff deposited the costs as directed by the trial Court and not by this Court. On September 21, 1934, the plaintiff filed an application before the trial Court for joining his brother and nephews as defendants in the suit as they were not willing to join as plaintiffs. This prayer was allowed on September 22, 1934. On November 19, 1934, when the suit came up for hearing the defendants contended that the suit could not go on as the costs as directed by the Court were not paid by the plaintiff within the time fixed by this Court. The learned Subordinate Judge gave effect to this contention. Therefore, this Rule was obtained by the plaintiff as stated above for extension of time for paying the balance of the costs decreed in favour of the defendants. The learned Advocate for the opposite parties opposed the Rule on the ground that this Court had no power to extend the time under Order XLVII, Rule 1 or Sections 148 of the Civil Procedure Code. Assuming, however, that this Court has power, I am of opinion after hearing the learned Advocates for both parties that this is not a case in which time should be extended. The ground for extension of time taken by the petitioner in the petition on which the Rule was issued is that the omission to deposit the entire costs was due to a bona fide mistake on his part as he relied on the order of the Court. It is also stated in the petition that the petitioner was also misled by the fact that the defendants did not take any objection on the ground of insufficiency of the amount of deposit when the amount was deposited.

4. The petitioner himself filed an appeal against the decree in which the amount of costs decreed in favour of the defendants was clearly and specifically mentioned. It is not stated anywhere in the petition to this Court for extension of time that the petitioners did not know the contents of the decree or that he had not in his possession any copy of the decree. The prayer for amendment of the plaint at a very late stage of the suit was an indulgence shown to him on condition that he would pay the costs incurred by the defendants in the Courts below within the time fixed by this Court. It was his duty to carry out that order. The facts of this case do not show that he was really misled by the order of the Subordinate Judge. It was not the duty of the defendants to put him on his guard.

5. This is not, therefore, a fit case in which time should be extended. The Rule is accordingly discharged with costs. Hearing fee is assessed at one gold mohur.