

Kshum Chand Bhuturia and Another Vs Ghane Muhammad Saha and Another

Court: Calcutta High Court

Date of Decision: May 4, 1916

Acts Referred: Civil Procedure Code, 1908 (CPC) – Order 41 Rule 22, Order 41 Rule 33

Citation: 38 Ind. Cas. 361

Hon'ble Judges: Richardson, J; N.R. Chatterjea, J

Bench: Division Bench

Judgement

1. The appellants, who were the plaintiffs, sued the respondents as defendants for rent and obtained a decree for a portion of the claim. The

plaintiffs then appealed against the disallowance of the balance of the amount claimed and the defendants did not prefer any cross-appeal nor took

objections under Order XLI, Rule 22, Code of Civil Procedure. The learned District Judge, however, on the appeal of the plaintiffs dismissed the

suit entirely. We think the learned Judge was wrong in doing so. As pointed out in the case of *Ganga Dhar Muradi v. Banabashi Padhari* 24 Ind.

Cas. 208 : 22 C.L.J. 390, ordinarily Rule 33 should be limited to those cases where as a result of the Appellate Courts interference with the

decree in favour of the appellant, further interference is required in order to adjust the rights of the parties in accordance with justice, equity and

good conscience. Further, as pointed out in the case of *Abial Majhi v. Inta Bepari* 32 Ind. Cas. 494 : 20 C.W.N. 542 : 22 C.L.J. 394, Rule 33 of

Order XLI is very widely expressed, but it should not be applied so as to enable a party litigant to ignore the other provisions of the Code or the

provisions of Statutes like those which relate to limitation or payment of Court-fees.

2. Even assuming that Rule 33 is applicable to a case of this nature, the judicial discretion vested in the Court of Appeal below was not properly

exercised in this case. We accordingly set aside the decree of the lower Appellate Court and restore that of the Court of first instance. Each party

will bear his own costs in this Court as well as in the Court of Appeal below.