

**(1916) 05 CAL CK 0039**

**Calcutta High Court**

**Case No:** None

Kshum Chand Bhuturia and  
Another

APPELLANT

Vs

Ghane Muhammad Saha and  
Another

RESPONDENT

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**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

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### **Judgement**

1. The appellants, who were the plaintiffs, sued the respondents as defendants for rant 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.