

(1928) 02 CAL CK 0034**Calcutta High Court****Case No:** None

Corporation of Calcutta

APPELLANT

Vs

Asoke Kumar De

RESPONDENT

Date of Decision: Feb. 1, 1928**Acts Referred:**

- Calcutta Municipal Act, 1923 - Section 538

Citation: AIR 1928 Cal 743 : 113 Ind. Cas. 166**Hon'ble Judges:** Rankin, C.J; C.C. Ghose, J**Bench:** Full Bench**Judgement**

Rankin, C.J.

In this case the plaintiff Asoke Kumar De sues the Corporation of Calcutta to recover a sum of money which is under Rs. 1,000. His case is that his father Brojo Lal De was an employee of the defendant Corporation, that he was a contributor to the Provident Fund managed by that Corporation and that he died on 27th November 1920, leaving the plaintiff his only son and heir. It appears that besides the plaintiff there were three unmarried daughters and the plaintiff's mother predeceased his father. At the time of the father's death his brother Kunja Lal De, was, according to the defendants, a person, in whose care the plaintiff and the unmarried sisters were living. In that state of things what happened was this : the plaintiff's uncle Kunja Lal De applied to the Corporation for payment of the sum of money standing in the plaintiff's father's credit in the account of the Provident Fund of the Corporation and they acting under Rule 19 of their rules paid that sum of money to Kunja Lal De upon taking an Indemnity Bond from him with security. The plaintiff brings his suit in 1926 having attained majority and he requires the Corporation to pay to him over again the sum of money which was standing to the credit of his father's account. He says that by the payment made to Kunja Lal De, the Corporation has got no discharge against him. The defendants by their written statement set up the fact that at the time they paid to Kunja Lal De he produced a certificate from an

Hodorary Magistrate saying that Kunja Lal was the plaintiff's guardian. They say that on the strength of this certificate and on the fact that the mother was dead, they in good faith paid the money to Kunja Lal and they are protected by the provisions of the Provident Funds Act and the Corporation's Provident Fund Rules.

2. There is no dispute about the amount of the money. As there was a small amount of wages due to the plaintiff's father and a small amount contributed by him for the purchase of war bonds on the one hand, and as on the other it appears that the plaintiff's father had taken an advance from the Provident Fund, these matters had to be adjusted. But there is no dispute as to the amount that was due to the proper representative of the plaintiff's father or that it may be regarded as a case of compulsory deposit within the meaning of the Provident Insurance Societies Act, 1912 and the argument advanced before us on behalf of the Corporation proceeds on that assumption. At the hearing of the suit Mr. S.N. Banerjee for the Corporation raised two issues. The first is whether the suit was barred by limitation. That appears to have reference to the special provisions of Section 538, Calcutta Municipal Act. It says certain suits should be commenced within four months after the accrual of the cause of action. The learned Judge has rightly refused to entertain that argument because that section applies to suits against the Corporation in respect of an act purporting to be done under the Calcutta Municipal Act or under any rule or bye-law made thereunder. This is not a suit against the Corporation for any act which they justify or can justify under the powers conferred by the Calcutta Municipal Act, 1923.

3. This is not a suit for damages for having paid money to Kunja Lal. It is a suit again3t the Corporation asking them to pay a sum of money which the plaintiff says they owe to him. Issue 2 refers to Section 3, Provident Funds Act (9 of 1897), and that is the matter which has been chiefly in debate before us. If one looks at the provision made by Section 3 of that Act with regard to small sums of money, meaning thereby sums which do not exceed Rs. 2,000 standing to the credit of a depositor at the time of his death, one finds that it says that the officer or person whose duty it is to make payment of such sum may pay it to any person entitled to receive it according to the rules of the Fund. There is a little complication introduced in order to provide that unless the rules of the Fund prescribe to the contrary they shall be deemed to include a power to the depositor to nominate in writing somebody to receive the money. But if one puts aside that complication the first provision is that the officer may pay the money to any person entitled to receive it according to the rules of the Fund.

4. The next thing is this:

In any case not hereinbefore provided for, ho may pay it to any parson appearing to him to be entitled to receive it.

5. Now, in the present case the argument has reference to It. 19 of this fund which is in the following terms:

On the death of any subscriber the manager shall pay to his representatives, executors or administrators the amount standing to his credit in the account prepared in accordance with the provisions of Rule 14.

6. As regards the meaning of the word "representative" some light is perhaps thrown by the fact that in another rule reference is made to heirs, representatives and also to the next of kin. But the meaning of that rule is not, I think, in doubt. The law in this country is well known to be that it is not necessary in all cases to take out probate or letters of administration in order to confer a title upon the persons who are generally called in this country by the word "heirs." In the case of Hindus even where the Probate and Administration Act is applicable it is not always true to say that an heir must take his title through a probate or through letters of administration. The meaning of this rule appears to me to be that the manager is to pay the money to the person entitled to receive it as a matter of testate or in testate succession. It is said that in the present case as there was no executor or administrator and as the heir was a minor son, the present case is not provided for by Rule 19 and accordingly it is contended that Clause (b) to Section 3, Provident Funds Act, can be resorted to, because as the minor was not entitled to receive it in the literal sense the case was one not provided for by Clause (a) and that accordingly in this case the manager might pay the money to any person appearing to him to be entitled to receive it. In my judgment that argument cannot be accepted. The provision that in any case not provided for by Clause (a) the manager may pay the money to any person entitled to receive it, is a provision intended not to defeat the rules of the Fund; but to take effect; only in those cases where the rules of the Fund do not tell the manager what person is the proper person to be paid. In my judgment the corporation, while they would be quite entitled by their rules to make a simple provision to the effect that on the death of a depositor the money should be paid to his eldest son or to his youngest son or to make any other provision they liked, have chosen to make a provision that it is to be paid to the man's representatives, executors or administrators and they have, therefore, taken upon themselves the duty of ascertaining who it is that complies with that description; and it does not seem to me that it is open to them under such a rule, merely because the representative happens to be a minor, to claim that they may pay the sum to anybody whom they think to be the proper person to receive the money on behalf of the minor. The intention of the Act was that these funds might make clear and simple rules which they could easily administer and that if these rules did not apply to any particular case, the officer or manager should not necessarily at his peril find out the proper legal representative. But that intention of the Act has been defeated by the character of the rule itself which assumes the duty of finding out the proper legal representatives and dealing with them in the ordinary way. It seems to me, therefore, that neither of these defences set up by the Corporation is

a valid defence.

7. It is somewhat curious that at the end of the arguments in this case a defence much more simple and direct than any of these others was indicated, which seems a very satisfactory defence to the plaintiff's claim, namely, that the Corporation have already paid him : that is to say that in paying Kunja Lal De they paid it in such a way that the payment is a good discharge against the plaintiff on the ground that Kunja Lal De was a *de facto* guardian with power to give a discharge. I cannot help observing that that should have been the first defence. If a man is sued for money the first thing he would take for his defence is that he has already paid it. That was not suggested, so far as I can see, before the learned Judge and Sir Benode Mitter has to concede that it is not open to him to proceed upon any doctrine of natural guardianship. The defence he indicates in this direction is that the uncle may have been the *de facto* guardian. But it appears as he frankly admits that while certain powers are allowed to be exercised by persons who are managing a minor's property it is very necessary that any case of that sort should be based upon investigation of the facts.

8. Mr. Sircar for the plaintiff points out that no such case was pleaded. It is quite clear that the learned Judge was not asked to investigate such a case and we are informed that Mr. Sircar disputes the fact that the uncle was *de facto* manager of the infant's property. It seems to me that line of defence raised very late is not now open either on the pleadings or having regard to the issues and the conduct of the case in the lower Court. On the whole it seems to me that the Corporation have no answer to this claim.

9. I will only advert in conclusion to the suggestion that there might be some defence in the provisions of Section 5, Provident Funds Act. That section runs thus:

No suit or other legal proceeding shall lie against any person in respect of anything done or in good faith intended to be done in pursuance of the provisions of this Act.

10. There again it seems to me that this is not such a suit. It is not a suit for damages. It is a suit to require the Corporation to make payment of a sum of money which is due to the plaintiff.

11. In my judgment this appeal must be dismissed with costs.

C.C. Ghose, J.

12. I agree.