# Phaniram Rathi Vs Ambica Charan Hazra

**Court:** Calcutta High Court

**Date of Decision:** April 26, 1926

**Final Decision:** Dismissed

## Judgement

Cuming, J.
The facts of the case out of which this appeal arise are these. Defendant No. 1 brought a suit in the Small Cause Court against

Defendants Nos. 2 to 6. He applied for attachment before judgment and the properties now in suit were attached. The Defendant No. 1

proceeded to sell the properties in suit in execution of the decree he obtained in his suit. The Plaintiff in this suit tendered a claim which was

disallowed and hence this suit for declaration of title and recovery of possession. The defence seems to have been that the sale to the Plaintiff was

a sham transaction. The Court of. first instance decreed the Plaintiff''s suit in full on the 4th March, 1919. Application for review of judgment was

then made. The basis of the application was that Plaintiff was a man of straw which fact the Defendant had tried to prove in the trial. He had now

discovered some new and important evidence which he could not have discovered during of before the trial.

2. This application was heard by another Judge Mr. Upendra Nath Biswas and he allowed the application for review of judgment on the 9th

December, 1919.

3. He then re-heard the ease and once more the suit was decreed, the Defendant No. 1 appealed to the District Court; The main contention in that

Court seems to have been that the Court on review was bound to re-open the whole case. Further that the Court hearing the case after review had

been granted was bound to admit other evidence beside that on which the review had been granted. The District Court rejected the appeal and

Defendant No. 1 has appealed to this Court.

4. The Appellant contends that the application for review having been granted the Court hearing the case was bound to re-open the whole case,

and not only the points on which further evidence had been admitted. He contends that unless that Court granting the review restricts the review to

any particular point the Court hearing the case on review must re-hear the whole case. In the present case the Judge who granted the review did

not restrict the review to any particular point.

5. We have been taken through a number of decisions but none of them are authorities for the proposition that the learned Advocate would ask us

to accept.

6. I will deal very briefly with some of them-Sheikh Saderuddin v. Sheikh Ekramuddin 18C.W.N. 22 (1918). In that case it was contended that

when an application for review had been granted the Court at the re-hearing is restricted to the particular ground on which the review was granted.

The learned Judge held that that was not so but that the Court might either hear the case as a whole or re-hear special points. This case is therefore

only an authority for the proposition that the Court hearing the case on review may re-open the whole case.

7. The learned Judge referred to the case of Bhugwandeen Dobey v. Myna Baee 11 M.I.A. 487 (1870). and the case of Harbans Sahay v.

Thakur Prasad I.L R. 9 Cal. 209 (1882). where it was held that where a review had been granted on a particular ground it was open to the

reviewing Court to either re-hear the whole case or restrict it to any particular point as the Court thought fit.

8. These authorities are obviously against the Appellant''s contention. The next case is the case of Goursunder Bhowmik v. Rakhal Raj Bhowmik

20 C.W.N; 1165 (1916).

9. Mookerjee, J., remarked that the view cannot be supported on principle that whenever an replication for review is granted the entire case must

necessarily be re-opened. The learned Judge then refers to a number of cases and remarks :--

These cases show that the Court may, at its discretion, direct the whole case to be opened if it is necessary in the interest of justice that such a

course should be adopted; but they are not authorities for the proposition that whenever a review is granted on a particular point the whole case

must be re-opened. The case of Gour v. Nilmadhub 36 C.L.J. 484 (1922) was also referred to. It cannot be said that it in any way supports the

Appellant''s contention.

10. It would be idle to refer to any further authorities. All these authorities I have been referred to are against the Appellant and he has not cited a

single authority in his favour. In view of these decisions the point hardly called for any serious discussion. Probably so far also as the present case is

concerned the point is really of academic interest because looking at the judgment on review of the"" learned Judge I am inclined to think that be

actually re-heard the whole case for he does deal with some other points specifically; as for instance whether the kobala was executed with the

intent to defraud. The evidence used in the Court of first instance was made evidence in the case and the learned Judge concluded by saying: For

all these reasons I fully agree with the judgment of my learned predecessor on all points, who has very ably and carefully dealt with all the questions

raised in this case.

11. The next ground argued by the learned Advocate for the Appellant, is that the Court below erred in not admitting certain documents at. the trial

on the ground that they were not mentioned at the time when the review was granted and also some that were not mentioned in the application for

review but were filed in Court pending the hearing of the application for the review.

12. It seems to me that the Judge was quite light in refusing to allow any new evidence to be adduced except the evidence the discovery of which

after the trial formed the subject-matter of the application for review.

13. For, the review is granted because this particular evidence is new and important and was not within his knowledge at the time of trial. Until he

establishes these facts he has no ground for review and the Court before granting the review must be satisfied on these facts. Now it is the Court

granting the review which has to be satisfied and it seems to me that it is that Court which has to determine whether any particular piece of

evidence satisfies the condition of Or. 47, r.1. To hold that at. is sufficient after producing, say one such piece of evidence, and a review being

granted on the strength of it that it is open to the party then to put in a large body of fresh evidence on the point would be most dangerous. I am of

opinion that a party is confined at the hearing so far as additional evidence is concerned to those pieces of evidence which actually formed the

subject-matter of the application for review.

14. To hold otherwise is to open wide the door to fraud and forgery.

15. No other points have been argued in the appeal. There was a faint suggestion regarding sec. 53 of the Transfer of Property Act on the ground

that the Plaintiff had notice apparently of the Defendant No. 1''s suit. The learned Advocate did not attempt to argue it probably for the reason that

it was a question of fact and there is not the slightest indication that the point was taken in the lower Appellate Court. The appeal must be

dismissed with costs.

Page, J.

16. I agree that the appeal should be dismissed. In this case it is not necessary to consider the grounds upon which a Court ought to proceed on an

application for a review of judgment being preferred under Or. 47, r. 1. For the purpose of this appeal it must be taken that the order passed by

the learned Subordinate Judge of Alipur on the 9th December 1919 granting a review of the judgment of his predecessor was duly made in

accordance with law. The question that we have to determine is whether the. learned Subordinate Judge, when reviewing the judgment of the 4th

March 1919, was entitled to reject certain documents that were tendered by the party who had obtained the order of review upon the ground that

the documents were available to the party tendering them, and could have been produced by him at the time when the decree was passed.

17. Now, when the Court orders that a judgment be reviewed the case is to be re-heard and ""re-heard on the merits"" Or. 47, r. 8, and per

Jenkins, C.J., in Vadilal v. Fulchand ILR 30 Bom. 56 (1905).. But what is meant by a re-hearing ""on the merits""? The learned Advocate for the

Appellant contends that when a review has been granted there must be a re-hearing of the whole case de novo and that the parties are entitled to

adduce any evidence which is relevant to the issues raised by the pleadings. If this contention is sound the documents in question ought to have

been admitted. On the other hand, the Respondent contends that when a case is reheard after a review has been granted the Court is entitled to

take into consideration only the evidence that was before the Court at the trial, and the additional evidence upon which the review was granted. If

that be so the documents in suit were rightly rejected.

18. I have examined the Indian cases that are ad rem, and the English decisions on the subject of bills of review and actions of review to which I

have been able to obtain access, but I can find no direct authority upon the question that we are called upon to decide in this case. The law relating

to the review of judgments may be collected from the following decisions : Nusseeroodeen Khan v. Indur Narain Chowdhury 5 W.R 93 (1866),

Tekait Khood Narain Singh v. Toolsee Ray, Koleemoodeen Mondal v. Heerun Mondal 24 W R. 186 (1878), Sainal Ranchod v. Dullobh Dwarka

10 Bom. H.O.B. 360 (1873), Reasut Hossein v. Hadjee Abdoollah L.R 3.IndAp 221 (1876), Ellem v. Basheer ILR 1 Cal 184; s.c. 24 W.R. 382

(1875), Ray Meghraj v. Bejoy Gobind ILR 1 Cal 1971 s.c. 23 W.B. 438 (1875), Harbans Sahay v. Thakur Prasad ILR 9 Cal. 209 (1882),

Mahadeva Rayor v. Sappani ILR 1 Mad. 396 (1878), In re, Appa Rao L.R.13 IndAp 155 s.c.I.L.R. 10 Mad. 78 (1886), Vadilal v. Fulchand

I.L.R 80 Bom. 56(1905), Sheikh Saderuddin v. Sheikh-Ekramttddin 18 C.W. N. 22(1913),Goursunder v. Rakhal Raj 20 C.W.N. 1165 (1918),

Gour v. Nilmadhub 36 C.L.J. 484 (1922); Hosking v. Terry 15 Moo; P.C.493., Bhugwandeen Dobey v. Myna Baee 11 M.I.A. 487 (1870).,

Chhajju Ram v. Neki L.R. 40 IndAp 1441: s.c. 26 C.W.N, 697 (1922), Willn v. Willn 16 Ves 72 (1809), Young v. Keighley 16 Ves. 348.

(1809), Hungate v. Gascoyne 2 Phillips 25 (1846)., Thomas v. Rowlings 34 Beavan 50 (1864), Anderson v. Titmas 36 Iaw Times 711,(1877),

Bosewell v. Coaks 6 R. 167 and. Charles Bright & Co. v. Sellar [1904] 1 K.B.6.. See also Civil Procedure Code, Or. 13, r. 2. The conclusion at

which I have arrived, as the result of my investigation, is that at the time when an application for review of a judgment on the ground of the

discovery of new and important evidence is before the Court it is open to the Court under Or. 47, r. 8 to determine whether the case shall be re-

heard in part or in its entirety. In the absence of any special directions in-.that behalf by the Court granting the review the whole case is re-opened,

land the Court is not restricted to a re-consideration of the particular point upon which the application for a review succeeded. At the re-hearing of

the case the Court ought to take into consideration the evidence adduced at the trial and the additional evidence, if duly proved, upon which review

was granted, and any relevant evidence in rebuttal of such additional evidence. The Court is also entitled to admit evidence, even if it was available

to the party tendering it at the, time'' when the case was first heard, if the Court is of opinion that it was relevant to an issue raised at the trial and to

be reconsidered at the re-hearing, and that the party tendering the evidence was prevented by some cause for which such party was not

responsible from adducing the evidence at the trial; or if the party retrained at the trial from adducing such evidence because in the absence of the

additional evidence upon which the review was granted it was not reasonable or necessary that the party should have adduced it at the trial. But

the Court at the re-hearing ought not to allow a party to adduce evidence which was available or with reasonable diligence might have been

procured by such party at the time of the trial merely in order to reinforce at the re-hearing a case which the party raised or ought to have raised at

the trial. The reason for the restriction is to prevent the fabrication of false evidence, and it is an invariable ""rule in all the Courts, and one founded

upon the clearest principles of reason and justice that if evidence Which either was in the possession of parties at the trial, or by proper diligence

might have been obtained is either not produced or has not been procured and the case is decided adversely to the side to which the evidence was

available, no. opportunity for producing that evidence ought to be given by granting a new trial. If this were permitted it is obvious that parties

might endeavour to obtain the ""determination of their case Upon the least amount of evidence, reserving the right, if they failed to have the case re-

tried upon additional evidence which was all the time within their power,"" per Lord Chelmsford in Sheddan v. Patrick & the Attorney-General

(25). Applying the above tests to the document in question, I think that they, were rightly rejected by the learned Judges in the lower Courts; and I

am of opinion that the appeal fails and should be dismissed.