

(1967) 05 CAL CK 0020

Calcutta High Court

Case No: F.A.T. 2119 of 1966

Kishen Pershad

APPELLANT

Vs

The Chief Conservator of Forests,  
Andaman and Nicobar Islands  
and Others

RESPONDENT

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**Date of Decision:** May 17, 1967

**Acts Referred:**

- Constitution of India, 1950 - Article 225
- Specific Relief Act, 1963 - Section 12
- Stamp Act, 1899 - Section 60

**Citation:** 72 CWN 32

**Hon'ble Judges:** C.N. Laik, J; A.C. Sen, J

**Bench:** Division Bench

**Advocate:** P.C. Borooah, for the Appellant;

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### Judgement

C.N. Laik, J.

The only point arises for consideration is whether this appeal, by the plaintiff, directed against the decree of dismissal of his other class suit, purported to be u/s 12 of the Specific Relief Act, passed by the learned District Judge, Andaman & Nicobar Islands on March 31, 1966 has been properly filed at Calcutta, instead of in the Islands, in the context of the Rules here-after mentioned and whether the appeal can be entertained and should be allowed to be proceeded with at Calcutta. It touches the procedure and the answer depends on the interpretation of certain Rules, governing cases arising in the Islands, which are framed by this Court, in exercise of the powers conferred on it by Article 225 of the Constitution read with s. 14A of the Andaman and Nicobar Islands Regulation, 1876 (Reg. III of 1876). The relevant Rules are, Rules 1, 3 and 7, appearing in Part V, Chapter XVIII of the current Appellate Side Rules.

"Rule 1. In this chapter "case includes suit, appeal, application, petition or reference."

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"Rule 3. Subject to the powers reserved to the Chief Justice by article 225 of the Constitution, the following cases arising in the Andaman and Nicobar Islands shall be heard at Calcutta, namely:--

(a) Every case cognizable by the High Court in its Extraordinary Original Civil, Ordinary or Extraordinary Original, Criminal, Admiralty, Testamentary and Intestate or Matrimonial jurisdiction.

(b) Every appeal under clause 15 of the Letters Patent, 1865.

(c) Every case which is to be heard by a Bench or more than two Judges.

(d) Every case under Order XLV of the Code of Civil Procedure, 1908.

(e) Every case under the Indian Divorce Act (IV of 1869) and u/s 60 of the Indian Stamp Act (II of 1899) required to be heard by a Bench of three Judges.

(f) Every case against an Advocate, Attorney, Pleader or Muktear in respect of any misconduct for which he may be suspended or dismissed from practice and a disciplinary case under the Legal Practitioners Act, 1879, which is required to be heard by a Bench of three Judges.

(g) Every application for review of judgment, for the appointment of a Receiver or for the issue of an injunction, the hearing of which should not, in the opinion of the Bench to which the application is made, be delayed till the next visit of a Judge or Judges to the Andaman and Nicobar Islands,

(h) Every criminal appeal or application for revision in which all the persons convicted have within two weeks of filing their appeal or application, re-requested the Registrar for being heard at Calcutta.

(i) Every application against an order passed by the Registrar in the Andaman and Nicobar Islands which, in the opinion of the Bench to which the application is made, cannot conveniently be heard in the Islands.

(j) Every case which all the parties request the Registrar for being heard at Calcutta.

In all the above cases the plaintiff appellant, applicant or petitioner may at his option institute, the proceedings in the Andaman & Nicobar Islands and if he does so, the file shall be transmitted to Calcutta as soon as the process fees have been paid."

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"Rule 7. All other cases arising in the Andaman and Nicobar Islands shall be instituted and heard in the Islands."

2. Mr. Borooah learned Advocate for the appellant, contends that cl. (j) only of r. 3 is attracted and no other. He submits that the only party now is the appellant and on his request this appeal should be entertained and heard at Calcutta.

3. We are unable to accept the contention. Rule 3 in its several clauses expressly, states the class of cases arising in the Islands, which shall be heard at Calcutta and the option was given to the appellant, applicant or the plaintiff, -- as the case may be, -- to institute the proceeding also in the Islands, which would be transmitted to Calcutta on the deposit of process fees. Rule 7 makes a definite provision that all other cases arising in the Islands shall be instituted and heard in the Islands. It is a definite bar to the filing and the hearing at Calcutta of the suits, appeals etc. not falling within the clauses (a) to (i) of Rule 3. Clause (j) in Rule 3 no doubt makes a departure, but it must fulfil the requirement of the request of all the parties. It presumably means all the parties on both sides and cannot mean the appellant alone at this stage. It does not appear that any step to this end has been taken by the appellant so far and that that stage has arrived. Notices of the appeal on the respondents have not gone out and they have not yet entered appearance. Hence the request by all the parties is not there and the condition in clause (j) is not fulfilled. This appeal belonging to the group of "all other cases" in Rule 7 has not been entertained by the Stamp Reporter and, in our opinion, rightly.

4. Accordingly this appeal must be held to be not properly filed in accordance with the Appellate Side Rules and cannot be entertained by the office. Let the Memorandum of Appeal be returned to the learned Advocate for its presentation, if so advised, to the Registrar in the Andaman and Nicobar Islands, Port Blair.

A.C. Sen, J.

5. I agree.