courtkutchehry.com

Company: Sol Infotech Pvt. Ltd.

Website: www.courtkutchehry.com

Printed For:

Date: 18/10/2025

Sabita Dutta Vs Abir Chnad Dutta

C. O. T. No. 2043 of 1990

Court: Calcutta High Court

Date of Decision: Aug. 27, 1990

Acts Referred:
Civil Procedure Code, 1908 (CPC) â€" Order 41 Rule 22, Order 41 Rule 22(1)#West Bengal Premises Tenancy Act, 1956 â€" Section 17, 17(1)

Citation: 94 CWN 1025

Hon'ble Judges: S.S. Ganguly, J; M.N. Roy, J

Bench: Division Bench

Advocate: Bijan Majumdar, for the Appellant;

Judgement

S.S. Ganguly, J.
The appeal being F.A. No. 184 of 1986 out of which the present C. O. T. arises, was filed on 13.9.84. It appears that

the respondent appeared through a Id. Advocate sometime in March 1986. In or about July this year the appellant expressed his desire not to

continue with the appeal and he wanted that the appeal be dismissed for non-prosecution. On 23.7.90 the respondent filed a cross-objection. The

Id. Stamp Reporter reported however, on 7.8.90 that the cross-objection was filed beyond the period of limitation. Hence this point has been

taken up for decision before taking up the disposal of the cross-objection on merits and the appellant"s prayer for dismissal of the appeal. Under

Order 41 Rule 22(1) a cross-objection is to be filed within one month from the date of service of notice of the day fixed for hearing the appeal

either on the respondent or his learned Advocate or within such further time as the Appellate Court may see fit to allow. In this case as stated

above, the cross-objection was filed a long time after the filing of the appeal. It is admitted position that the notice mentioned in Order 41 Rule

22(1) being the notice described in item 6 of Appendix "G" to the CPC was not served upon the respondent. It is urged, therefore, from the side

of the respondent that the limitation of one month from the date of the service of the notice of appeal does not apply to the case of cross-objection

filed by the respondent in this case. It is urged from the side of the appellant on the other hand that since the respondent appeared through her Id.

Advocate long ago her date of such appearance should be treated as the date of service of notice on her and that since she did not file her cross-

objection within a month from that date her cross-objection should be held to be barred by limitation under the provisions of Order 41 Rule 22(1)

of the Code.

2. As per the provisions of Order 41 Rule 22(1) the limitation of 30 days starts running only from the day of the service of the notice either on the

respondent or on his learned Advocate. Since no notice was served in this case there was no starting point of limitation here, The learned

Advocate for the respondent cites Kantilal and Bros. and Another Vs. Ramarani Debi and Others, and AIR 1944 76 (Lahore) In both of these

cases the cross-objection was filed before the service of the notice. These decisions are, therefore, not to the point so far as the present case is

concerned. The learned Advocate, also cites G.C. Venkataraju v. G. Rambhaddirrajoo, AIR 1942 Mac 403. This was a case where instead of

the Advocate the notice was served on his clerk. It was held that service of the notice on the clerk could not be equated to service of the notice on

the learned Advocate himself and hence no notice was served in this case at all. It was held that under such circumstances there could not be any

limitation as contemplated under Order 41 Rule 22 of the Code. This is a decision on the point, no doubt, but the learned Advocate places his

reliance mere upon two decisions of this Court being Lakshmi Kanta v. Beharilal, 67 CWN 553 and Durga Duttta v. Dalhousie Properties. ILR

(1969) Cal. 595. These were decisions on Section 17(1) of the West Bengal Premises Tenancy Act. Section 17(1) as it stood previously obliged

the tenant to deposit all arrears of rent together with interest within a period of one month from the date of service of the notice on him. In both the

cited cases the arrears were not deposited at all, and it was urged from the side of the defendant that they were not obliged to do that since no

notice was served on them. It was urged from the side of the plaintiff that the date of appearance of the defendant might be treated as the date of

service of the notice on them. This argument was repelled and it was held by this Court in Lakshmi Kanta v. Beharilal (supra) that the operation of

Section 17(1) was not attracted since the deed of summons was not actually served on the defendant, and that he could not be obliged to make

any deposit within one month from the date of his appearance. This decision was followed in Durga Dutta v. Dalhousie Properties (supra) where

the defendant did not make any deposit at all. It was held that the tenant should not be saddled with any mischief or adverse consequences u/s 17

of the aforementioned Act for non-payment or non-deposit of any arrears of rent. The learned Advocate for the appellant argues strenuously that

these decisions have no application to the facts of the present case. He points out that both these decisions dealt with summons whereas the Order

41 Rule 22 deals with notice of hearing of the appeal. He also urges that in Lakshmi Kanta v. Beharilal (supra) their Lordships we"re inclined to

treat the defendant with leniency since he was a tenant and that, therefore, the spirit of the decision could not be applied in this case where the facts

are different. We do not find any great merit in this argument and we do not see why the principle on which the aforementioned two cases were

decided could not be applied in this case also. The two cited cases dealt with situations in which the notice contemplated by the law was not

served on the other side and it was held by this Court that the obligation following from service of the notice could not attach to the parties who

were to be served with the notice. The principle as enunciated in these two decisions may certainly be applied to the case at hand. In this case as

mentioned above the notice was not served upon the respondent at all. Since the period of limitation was to be counted according to Order 41

Rule 22(1) of the Code only from the date of the service of the notice it must be held that the period of limitation never started running in this case

at all. In the spirit of the two decisions cited above we must also hold that the period of 30 days should not be counted from the date of the

appearance of the respondent through his learned Advocate as her appearance could not be treated at a par with the service of the notice on her.

In view of what has been stated above, we are inclined to hold that the cross-objection in this case, though it was filed a long time after the

appearance of the respondent in the F.A. No. 184 of 1986, cannot be treated as barred by limitation.