

Radha Raman Saha Banikya Vs Sitanath Banikya and Others

Court: Calcutta High Court

Date of Decision: July 5, 1920

Citation: 60 Ind. Cas. 738

Hon'ble Judges: Teunon, J; Newbould, J

Bench: Division Bench

Judgement

1. This Rule is directed against an order made by the Subordinate Judge of Dacca, by which he disposes of an application made for the review of

an order made by his predecessor-in office on 3rd August 1918. The order arises out of an application made by the petitioner before us for

permission to sue in forma pauperis. Permission was granted on 3rd August 1918 and the application for review was made by the opposite party

who was the first defendant in the proposed suit. This application was made on the ground that when the petitioner-the applicant for permission to

sue in forma pauperis-was examined under the provisions of Order XXXIII, Rule 4, Code of Civil Procedure, he was refused an opportunity of

cross examining the applicant on the merit of his claim. In the cases reported in Nawab Bahadur of Uurshidabad v, Harish Chandra Acharjee 11

Ind. Cas. 55 : 13 C.L.J. 593 and in Jogendra Narayan Bay v. Dwga Charan Guha 52 Ind. Cas. 610 : 46 C. 651 it has been held that the Court, in

considering the question whether the applicant has a good subsisting cause of action, must be into consideration not merely the allegations made in

the plaint but also the allegations made by the applicant when and if examined under Order XXXIII, Rule 4. It follows from these rulings, from the

provisions of Order XXXIII, Rule 7(2), that on general principles, when the opposite parties contend that the applicant has no subsisting cause of

action, they are entitled to test the statement that he makes in his examination under Order XXXIII, Rule 4, by cross examination. This ground,

therefore, on which the petitioner to the Rule supports the Rule must, we think, fail.

2. It is, then, suggested that the application for review is barred by limitation, but that is not so. The application for review was made on 6th

November 1918 and was followed by two subsequent applications on 13th June 1919 and 2nd July 1919. But these are to be regarded not as

fresh applications in review but as setting out grounds on which the application made on 6th November 1918 is to be supported, those grounds not

having been clearly set out in the original application.

3. Both the grounds taken in support of this Rule, therefore, fail, and the Rule is accordingly discharged. We make no order as to costs.