

(1981) 01 CAL CK 0014

Calcutta High Court

Case No: C.O. No. 362 of 1981

Jaydeb Mukherjee

APPELLANT

Vs

William Jacks and Co. (India) Ltd.

RESPONDENT

Date of Decision: Jan. 31, 1981

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Order 7 Rule 11(C), Order 7 Rule 13, 151

Citation: 85 CWN 671

Hon'ble Judges: B.C. Chakrabarti, J; A.K. Sen, J

Bench: Division Bench

Advocate: P.K. Chatterjee, for the Appellant; S.N. Tagore, S.K. Ghosal and S. Sinha, for the Respondent

Final Decision: Dismissed

Judgement

Anil K. Sen, J.

The plaintiff is the petitioner before us in this revisional application. The order impugned is one dated January 14, 1981, passed by the learned Subordinate Judge, Second Court, Alipore, rejecting an application u/s 151 of the CPC filed in Money Suit No. 12 of 1980. The plaintiff filed the aforesaid application praying for an order recalling the earlier order dated December 15, 1980, passed by the same court rejecting the plaint for non-payment of the court fees. It is not in dispute that the plaintiff instituted the aforesaid suit claiming a huge amount exceeding Rs. 1,50,000/-. He filed the suit paying the deficit court fee of Rs. 5/- only on April 30, 1980. Having obtained thereafter three dates for paying the balance court fees he paid court fee of Rs. 50/- only towards the balance on July 15, 1980, and then again prayed for time to pay the balance. Having obtained two adjournments for the purpose he again paid court fee of Rs. 50/- only on September 5, 1980; he then again obtained two more adjournments to pay court fee of Rs. 1,500/- on November 11, 1980. Even then the court fee paid was not sufficient for the claim laid in the suit. In that view the learned Judge directed the plaintiff to deposit the balance positively

by December 15, 1980. But on that date the plaintiff paid court fee of the value of Rs. 500/- only still leaving Rs. 782.50 as deficit. An application for further, extension of time to pay the court fee having been rejected, the plaint itself was rejected by an order passed on that date, namely, on December 15, 1980.

2. Keeping the balance yet outstanding the plaintiff filed an application u/s 151 of the Code for recalling the aforesaid order of rejection of the plaint dated December 15, 1980, and for giving him another opportunity to pay the balance court fee. In this application the only ground pleaded was that he had not the financial capacity to pay the entire court fee earlier for which he had been taking extension of time and lately on December 15, 1980, he was lying ill and could arrange for paying the court fee of the value of Rs. 500/- out of the deficit but not the entire one. The learned Subordinate Judge rejected this application u/s 151 on the ground that the application does not make out any sufficient reason for recalling the order of rejection of the plaint. According to the learned Subordinate Judge the plaintiff was given more than sufficient chance to pay the deficit court fee from time to time covering eight months and when he had failed to pay the entire defect court fee even when the court had given him three last chances the ground pleaded in the application u/s 151 was not considered to be sufficient ground by the learned Subordinate Judge. The application was accordingly dismissed. Hence, the present revisional application.

The revisional application is being heard on contest on notice to the defendant.

3. Mr. Chatterjee appearing in support of the present revisional application has contended that the learned Subordinate Judge wholly misread the plaintiff's application u/s 151 in thinking that no ground for recalling the order dated December 15, 1980, had been made out by the plaintiff. According to Mr. Chatterjee, upon a proper reading of the medical certificate attached to the application u/s 151 of the Code the learned Subordinate Judge should have accepted the case of the plaintiff that he was so ill on December 15, 1980, that it was not possible for him to attend court and deposit the entire deficit though in terms of the previous arrangement court fees to the extent of Rs. 500/- out of the deficit was deposited on that date. Mr. Tagore appearing on behalf of the defendant|opposite party has contested the point thus raised by Mr. Chatterjee. According to Mr. Tagore, the number of extensions granted by the learned Subordinate Judge itself shows how negligent the plaintiff was in the matter of depositing the deficit court fee. It has been contended by Mr. Tagore that no court could have granted any more indulgence to the plaintiff to pay the deficit court fees when a claim for a sum of over Rs. 1,50,000/- was laid in a plaint on a court fee of Rs. 5/- only. That apart, two other objections have been raised by Mr. Tagore to the maintainability of the application u/s 151 of the Code. In the first place, it has been contended by Mr. Tagore that when the order rejecting the plaint comes within the scope of Order 7 Rule 11(C) of the Code it is appealable and such an order cannot be recalled by the

court in exercise of its inherent power u/s 151 of the Code. Secondly, it has been contended by Mr. Tagore that in any event the plaintiff's claim being barred on December 15, 1980, the date on which the plaint was rejected that order could not have been recalled in exercise of inherent powers to the prejudice of the defendant in whose favour a valuable right had accrued under the law of limitation.

4. We have carefully considered the rival contentions put forward before us. So far as the first preliminary objection raised by Mr. Tagore is concerned, strong reliance is placed by Mr. Tagore on a Bench decision of this court in the case of [Saratchandra Sen Vs. Mrityunjay Ray Chaudhuri](#), and a number of decisions of other High Courts taking similar view to the effect that no court can entertain any prayer for exercise of its inherent power for recalling an order which is appealable under the Code. In our view correctness of these decisions to the extent they lay down any inflexible rule that mere, appealability of the order would bar entertainment of an application u/s 151 of the Code in relation thereto, is open to some doubt. We say so because, particularly so far as this court is concerned, it has taken a contrary view in the Full Bench decision in the case of [Smt. Bimla Devi Vs. Aghore Chandra Mallick and Others](#), . In our view one is to consider the particular facts and circumstances of each case and find out what is the real remedy. If, as usually in cases of dismissal for default, appeal would be no real remedy to a person we find no reason to think why the party shall be left with no remedy by denying him a right to invoke the inherent power u/s 151 of the Code if such a case is made out. As a matter of fact, the Supreme Court in the case of [Nain Singh Vs. Koonwarjee and Others](#), laid importance to this aspect when it was observed: "inherent jurisdiction of the court must be exercised subject to the rule that if the Code does contain specific provisions which would meet the necessities of the case, such provisions should be followed and inherent jurisdiction should not be invoked." In our view, it is not without any reason that the Supreme Court was laying emphasis on the fact that the alternative provision meets the necessities of the case; it is only when the alternative remedy meets the necessity of the case, that it bars exercise of inherent powers. It is, therefore, dependent upon the facts of each case whether alternative remedy under the Code would debar invoking the court's inherent jurisdiction u/s 151 or not. But irrespective of the question of maintainability of the application u/s 151 of the Code, we feel inclined to accept the other point raised by Mr. Tagore, viz. that on merits such an application could not have been allowed. In considering the application on its merits one is to consider whether the court could have exercised its inherent jurisdiction in recalling the order dated December 15, 1980, rejecting the plaint in the particular facts and circumstances of the case. It is not in dispute before us now that if a fresh suit had been filed on that date the claim would have been barred by limitation. Therefore, a valuable right had accrued in favour of the defendant under the law of limitation as a result of the rejection of the plaint. In most of the cases where the different courts have allowed applications u/s 151 of the Code recalling the rejection of a plaint for nonpayment of court fees they have

taken the view that such an order must be treated as an order made under Order 7 Rule 13 of the Code, the effect whereof is that the plaint is filed on the day the deficit court fee is so paid. Since, in our view, no claim could have been entertained on a plaint as in the present case on the date the plaint was so rejected because of limitation, it would not be just and proper for the court to exercise its inherent power and recall the order of rejection and thereby initiate a suit, so to say, for enforcing a barred claim. The court exercises its inherent power to further the cause of the justice and such justice must be even to both the plaintiff and the defendant so that it could not have been so invoked for depriving the defendant of a valuable right which has accrued in his favour. On this view we uphold the order passed by the learned Subordinate Judge dismissing the application u/s 151 of the Code and dismiss the present revisional application.

There will be no order as to costs.

B.C. Chakrabarti, J.

I agree.