
86 CWN 851

Calcutta High Court

Case No: C.R. No. 3913 of 1980

Ram Narayan Shaw

APPELLANT

Vs

Sumera Goali and
Others

RESPONDENT

Date of Decision: June 1, 1982

Acts Referred:

Civil Procedure Code, 1908 (CPC) " Order 9 Rule 13, 14#Limitation Act, 1963 " Section 3, 5

Citation: 86 CWN 851

Hon'ble Judges: B.N. Maitra, J

Bench: Single Bench

Advocate: R.N. Bhattacharjee, for the Appellant;

Final Decision: Allowed

Judgement

B.N. Maitra

1. Three persons filed a Misc. case under Order 9 Rule 13 of the CPC for setting aside the exparte decree passed in Money Suit No 78 of 1973.

The Misc. case was contested on only one ground that the petitioner had no locus standi to file the Misc. case The learned Munsif overruled that

contention and allowed the misc. case. Hence this revlsional application. Two-fold submissions have been made It has been stated that the

application under Order 9 Rule 13 of the Code was filed beyond time without making an application u/s 5 of the Limitation Act. Secondly, no

substitution was made. Petitioners are not the heirs or legal representatives of the deceased defendant, Teku Goala. Consequently, they have no

locus standi to file a misc. case within the meaning of rule 13 order 9 of the Code. That rule enjoins that only the defendant can apply for setting

aside the exparte decree. But the defendant did not make any such application.

2. It does not appear from the records that any written objection was filed by the plaintiff opposite party. Any way, because of section 3 of the

Limitation Act, the court is bound to consider the same. The learned Munsif lost sight of this matter altogether because the Misc. case was filed on

21st February, 1978, and the exparte decree was passed in the Money Suit on 29-6-1977. That is an illegality for which this order cannot be

sustained.

3. Secondly, no speaking order was passed. The learned Munsif did not give any reason why he overruled the plaintiff opposite parties contention

that the petitioners had no locus standi to file the Misc. case. So, a speaking order is necessary in this respect Section 146 of the Code deals with

proceedings by or against representatives. That section empowers the legal representatives of the deceased defendant to file such petition under

Order 9 Rule 13 of the Code. In view of this section, the objection in this respect cannot stand. But the trial court has not arrived at any proper

finding on this.

4. For the ends of justice, the matter must be remitted to that court. If the court finds on evidence that the applicants before him are defendant's

legal representatives and the petition has been filed in time, the prayer will be allowed. There is material irregularity. Hence for the ends of justice,

the case must be remitted to the trial court. The Rule is made absolute in the manner indicated above and the impugned order set aside. There will

be no order as to costs.