

(1925) 01 CAL CK 0045

Calcutta High Court

Case No: None

J.C. Das

APPELLANT

Vs

Cachar Native Joint Stock
Company Ltd. and Others

RESPONDENT

Date of Decision: Jan. 12, 1925

Citation: AIR 1926 Cal 349

Judgement

1. This is a Rule obtained at the instance of one of the defendants in the suit with regard to an order that was made by the Subordinate Judge directing certain accounts to be taken by a Commissioner appointed in the suit. The suit was commenced so long ago I think as the year. 1920, by the Company against certain of its officers including the auditor seeking to make them liable for certain loss which had been incurred by the Company which, it is alleged, is owing to the defalcation of some of the officers of the Company.

2. The claim against the auditor at whose instance this Rule was obtained was for a specific sum of some Rs. 69,000, and before all this was established a reference was made by the Subordinate Judge to a Commissioner directing certain accounts to be taken preliminary to the hearing of the suit. The order in the form in which it had been made by the District Judge was admittedly too wide and an application with regard thereto was made before Mr. Justice Chakravarti and myself some time in November last. The actual question that now arises before us was not, so far as I recollect, raised at that time, the application being confined to the form and extent of the order which had been made. It has now been brought to our notice that the order made by the Subordinate Judge involves the taking of certain accounts before any liability has been established against the present petitioner. We think that this, on the face of it, is not warranted by the nature of the suit notwithstanding the provisions of Order 26, Rule 11 to which we have been referred. We think the proper course for the Subordinate Judge is to try the suit in order to determine whether the petitioner is liable at all to the Company for the defalcation which has been alleged and we accordingly make the Rule absolute and we direct that the proceedings

before the Commissioner shall be stayed and that the suit shall proceed in order that the liability of the various defendants to the Company may be determined if such liability in fact exists.

3. It is extremely unfortunate that this suit which was commenced so long ago, I think, as the year 1920, has not been brought to trial, and in making the Rule absolute we direct that the Subordinate Judge shall take this case up within one month from date and the matter will be brought to our notice if the case is not commenced within that time with liberty to apply.

4. Costs: hearing fee, five gold mohurs, will be costs in the cause.