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**(1880) 02 CAL CK 0011****Calcutta High Court****Case No: None**

Ram Sahai Sing and Another

APPELLANT

Vs

Maniram and Others

RESPONDENT

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**Date of Decision:** Feb. 18, 1880**Acts Referred:**

- Criminal Procedure Code, 1898 (CrPC) - Section 622

**Citation:** (1880) ILR (Cal) 807**Hon'ble Judges:** Pontifex, J; McDonell, J**Bench:** Division Bench

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**Judgement**

Pontifex, J.

The rule that has been argued before us discloses rather a peculiar state of circumstances. The applicants, in October 1877, applied to the Subordinate Judge of Patna for permission to sue as paupers. On the 28th February 1878 he rejected that application, on the ground that he was bound to do so, as in his opinion, according to the plaintiffs' own petition, they were barred by limitation. Against that order the applicants made an appeal to this Court; but, on the 19th August 1878, this Court, considering the matter not properly a matter for appeal, dealt with it as follows by way of revision,—holding that, at that stage, the application could not be rejected on the score of limitation applying. They said that, as the applicants had paid the stamp fees on the appeal on the principle of having given up their claim for mesne profits, they might apply to the Court below again to admit their application as paupers if the mesne profits were excluded from their petition. Thereupon the applicants again applied to the lower Court to admit their petition as a pauper plaint.

2. On the 27th June 1879, after witnesses as to pauperism had been examined, the lower Court rejected that application to sue in forma pauperis. It was in consequence of the order made on that application, that the applicants came again to this Court and obtained the following rule: "That the defendants should show cause why, on payment of the proper court-fees within a time to be fixed by the

Court, the petitioners' application in the Court below should not be treated as a plaint filed on the 5th October 1877."

3. It appears that, after the evidence had been taken and the arguments concluded in the case before the Subordinate Judge on the second application to be admitted as paupers, he, on the 17th June, intimated to the parties that he rejected the application, but that he would give a written judgment. Before delivering his written judgment, either on the 21st or 22nd of June, the applicants made an oral offer to the Subordinate Judge to pay the court-fee stamps upon their petition in order to turn it into a plaint.

4. The learned Judge, on the 27th June, delivered a written judgment, and in that judgment, after deciding that the petition could not be accepted as a pauper plaint, he stated that an offer had been made by the petitioners to pay in the court-fee stamps if time were allowed them. He then goes on to state that he was sorry that he was obliged to reject that application, because, according to his view of the law, the original pauper application being rejected, any further proceeding must lie by way of a first suit.

5. At that time Skinner's case (I.L.R. 2 All 241 : s.c. L.R. 6 IA126), which has been lately decided by the Privy Council, had not come out to this country. At any rate, it does not appear that it was brought to the learned Judge's attention.

6. Before us it is argued on the authority of Skinner's case (I.L.R. 2 All. 241:S.C. L.E. 6 I.A. 126) that it was the duty of the Subordinate Judge, upon the offer to pay the court-fee stamps, to treat the petition as a plaint filed in October 1877, for the purposes of limitation.

7. The rule was granted by this Court u/s 622 of the Civil Procedure Code, and the question now before us is, whether we can interfere on the ground that the Subordinate Judge has in his decision exercised a jurisdiction not vested in him by law, or failed to exercise a jurisdiction so vested, or has committed some material irregularity.

8. Now, no doubt, we are bound by the decision of this Court on the first application, even if we were inclined to think that the Subordinate Judge could dismiss the petition of pauperism on the ground of limitation only. Whatever may be our opinion on that question, it is not open to us to go behind that decision. But we think that it was a question of very great doubt, whether this petition of pauperism, which had never been accepted, and which, on the 17th June 1879, the Subordinate Judge had verbally stated that he had rejected, and which only awaited the written judgment for its absolute rejection, could be considered as a subsisting proceeding which could be treated as a plaint filed on the 5th October 1877, even though the applicants on the 21st June offered to make immediate payment of the court-fees; and we also think that even if it could be so treated, it was imperative on the applicants to show, not only that they offered to pay the court-fee stamps, but also

that they had them ready in Court to put in.

9. We observe, however, that the applicants have not produced any affidavit stating that they were ready in Court with the court-fees on the day that they made that application, and we think that unless that offer was made, and the court-fees actually ready to be tendered, that it was not in the power of the Court to allow time for the purpose of obtaining and providing the money; and that, under the circumstances, the lower Court was right in rejecting the application, though this was not the proper ground given for its rejection.

10. At all events, we think that this is not a case in which we ought to interfere u/s 622 of the Code. We must, therefore, discharge the rule with costs.