(1869) 01 CAL CK 0017

Calcutta High Court

Case No: Rule Nisi No. 57 of 1869

Ajonnissa Bibi		APPELLANT
	Vs	
Surja Kant Acharji		RESPONDENT

Date of Decision: Jan. 22, 1869

Judgement

Bayley, J.

I am of opinion that this rule ought to be discharged with costs. The application to this Court was to exercise its extraordinary powers u/s 15 of the Charter Act, with a view to set aside certain proceedings of the Principal Sudder Ameen of Mymensingh, who had admitted a review after the lapse of more than three years. The words in Section 15 of the Charter under which the applicant can come to this Court, are that each of the High Courts "shall have superintendence over all Courts which may be subject to its appellate jurisdiction." I quite concur in the interpretation put upon those words by a decision of this Court passed by Mr. Justice Norman and Mr. Justice L.S. Jackson, Bhyrub Chunder Chunder v. Shama Soonderee Debea (6 W.R., Act X Rul., 68), viz., that that section gives to the High Court "large powers over the inferior Courts to compel them to do any act which by law they should do, to command them to execute all powers with which they are vested, and to restrain them from meddling when they have no jurisdiction." In the present case the Principal Sudder Ameen has admitted the petition for review more than three years after the decree on what, to my mind, appears to be a finding of fact that there were just and reasonable causes, such as are contemplated in Section 377, Act VIII of 1859, for the delay made in presenting the application. The substance of his judgment is that, as the mother died between the time of the institution of the suit, and before the passing of the decree, and as there was some delay consequent upon the Court of Wards taking charge of the estates of the minor, and as, immediately after the Court of Wards gave over charge of the estates to the petitioner after he had arrived at his majority, the petitioner used due diligence, and applied for a review within 90 days, there were just and reasonable grounds for admitting the review.

2. I do not think that the case of Mowri Bewa v. Surendra Nath Roy ([1]) bears upon the present question, because the whole case there was based upon proceedings after decree; whereas, in this case, nothing has been done in the shape of re-trial or a second judgment and decree. Another case decided in this Court has been mentioned to us in support of the application, but it has not been placed before us in any such shape that we can notice it. I would adhere to the rule that the Court should take notice of those decisions only which are actually placed before it for consideration, or are cited from the printed reports.

3. It has been argued by Baboo Anukul Chandra Mookerjee that there should have been, in the first place, a proceeding u/s 377, Act VIII of 1859, and a finding whether under that section there was any good and reasonable cause shown for the delay in filing the petition, and then another proceeding u/s 378 of that Act for admitting the review.

4. I do not think that the Principal Sudder Ameen has erred in jurisdiction in deciding first for the reasons given by him that there were just and reasonable grounds shown for the delay, and then going on in the same proceeding to admit the review; for, [187] although the sections contemplate two classes of circumstances, there is nothing in them to show that the finding, under the one section and the order under the other, cannot he recorded in one and the same proceeding.

5. The reason given by the Principal Sudder Ameen for admitting the review is that just and reasonable cause was shown for the delay. I would observe that those grounds may be more or less good and sufficient, but there is nothing on the face of them which justifies me in saying that the Principal Sudder Ameen has omitted to do what we can compel him to do, or that he was wrong in doing what he had no jurisdiction to do, or in refusing jurisdiction. In this view of the case, I think that the rule ought to be discharged with costs.

Hobhouse, J.

6. I agree in discharging the rule with coats. The grounds on which the rule was applied for are not very clearly stated in the application, but I will take it to be that the rule was granted on the following facts and substantially in the following shape, viz.--that there was a decision of the lower Court on the 12th September 1864; that the lower Court admitted a review of that decision on the 12th February 1868; and that the other side was called upon to show cause as to why the order admitting the review should not be set aside, on the ground that within the meaning of Section 377 of the Code, the lower, Court had not found that there was any just and reasonable cause shown for the delay in applying for the review.

7. In support of the rule, Baboo Anukul Chandra Mookerjee has contended before us, that as a matter of fact the lower Court had not found that there was any cause for the delay in applying for the review; that the lower Court has not tried that issue at all, and not having tried it, or found upon it, that the lower Court had no

jurisdiction to entertain the review at all, much less to admit it.

8. The whole question then, in my mind, turns upon the fact as to whether or not the lower Court came to any finding upon the point as to whether there was any just and reasonable cause shown for the delay. I agree with Mr. Justice Bayley in think-[188]ing that the Lower Court did come to such a finding. I do not say that the reasons shown were just and reasonable, or that the finding was a good one, or the contrary; but I hold that the Court did come to a finding on that point and that it was a finding within the jurisdiction of the Court,--a finding that may, therefore, possibly be a subject for appeal hereafter within the terms of Full Bench Ruling, Shama Charan Chuckerbutty v. Brindaban Chandra Boy (Case No. 1395 of 1866, 30th January 1868), but that it was not a finding in respect to which we can exercise our extraordinary powers u/s 15 of the Charter Act upon which the pleader in support of the rule relies. In this view, I agree in thinking that the rule should be discharged with costs.

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(1) Present:

Mr. Justice Phear and Mr. Justice Hobhouse.

Mowri Bewa versus Surendra Nath Roy.*

[=10 W. R. 178.]

Appeal--Delay in Filing.

On appeal to the High Court against the decree of a subordinate Court, everything which preceded that decree as an act of Court, is open to revision. It is competent to the High Court in special appeal to look into the grounds which a Judge has given for admitting an appeal after the lapse of the prescribed time.

Held, that inasmuch as a new statement of the law by the High Court is not a sufficient excuse for delay in applying for a review of judgment, it is still less an excuse for delay in preferring an appeal against a judgment.

The Judgment of the Court in this case was delivered, on the 17th July 1868, by

Phear, J.--The history of these cases is curious enough, but we need not narrate it at length now. It is sufficient to say that, on 29th of June 1865, 21 eases of appeal, parallel cases, were determined by the Judge of Nuddea, and all remanded to the Court of first instance for re-trial. Of these 21, the plaintiff in one only appealed specially to the High Court against the remand order of the Judge, and he was successful enough to get the remand order reversed, and the decree of the first Court, which had been appealed against to the Judge, substantially upheld. While this special appeal was pending, the 20 cases in which the plaintiff had not appealed were heard on remand by the first Court, and in all of them the plaintiff''s suit was dismissed, the first Court then reversing the decision to which it had before come.

This took place on the 11th of September 1865. The decision of the High Court on the one case in which the appeal had been preferred, was pronounced on the 6th of January 1866. One year and nine months after the judgment of the High Court, namely, on the 30th of October 1867, the plaintiff in the remaining 20 cases appealed to the Judge, against the decision of the Deputy Collector. The Judge admitted these appeals, although they were greatly out of time, and in each case, reversing the decision of the first Court, gave a decree accordant with the decree of the High Court in the analogous case which had been specially appealed. In 17 of these cases, the defendants, who are the parties aggrieved by the decision of the Judge, appeal specially to this Court, and the first (we may say the principal) ground of appeal is that the lower Court, the Judge, was wrong in admitting the appeals after the lapse of so long a period as had occurred beyond the time limited for that purpose by the Procedure Code.

It has been urged on the part of the special respondents that this Court cannot take an objection of this kind into consideration. It is said that inasmuch as the Judge has expressed himself satisfied with the reasons put forward by the appellants for their delay, it is not for this Court to interfere with the exercise of his discretion.

There cannot, however, be any doubt that on an appeal to this Court against the decree of a subordinate Court, every thing which had preceded that decree as an act of Court, is open to revision. It is, therefore, competent for us, sitting here on special appeal, to look into the grounds which the Judge has given for admitting the appeals in which the decision now appealed against was passed; and if we think that the grounds upon which he acted in so admitting the appeals are impeachable here in special appeal, we are bound to reverse his decision accordingly.

The cause which would induce this Court to interfere with the exercise of a discretion of the kind here referred to upon special appeal, would commonly be that the discretion was exercised without proper legal material to support it. Other grounds of impeachment might, no doubt, be imagined, such as that the discretion had been exercised capriciously, or with malice, and so on; but these are likely to be seldom exhibited. In this case, the Judge having said that he was judicially satisfied that the appellants, in coming to him so late as they did, had accounted for their delay, and there being no imputation upon his honesty, we have only to see whether he had before him material sufficient in law to enable him to come to the conclusion that the delay was justified.

His own statement on this point is that " the grounds showing the cause of delay were "reasonable, for it is an undisputed fact that the appellant''s former mooktear, since dead, "owing to old age, & c., had resigned his duties;" and before that he had said--"it is shown " that the Appellant could not have appealed on his present grounds during the prescribed " period." The cause of delay which we first read from the judgment of the Judge is one that might justify a delay of a few days, but could not possibly be any reason for not bringing a suit within two years. The other

ground, namely, that the appellant could not have Appealed on his present grounds during the prescribed period, is perfectly valueless. His present ground, we understand, to consist in the judgment of the High Court, delivered on the 6th of January 1666, in the cognate case, wherein the plaintiff had been diligent enough to appeal. And that judgment was not special in any way as an enunciation of law. However, had it in fact pronounced an interpretation of the law which had not previously been accepted, it would not have afforded a reason for a delay in bringing the appeal. This is, we think, clear from the reasoning and the ruling of the Full Bench, in Shama Charan Chackerbutty v. Brindaban Chandra Boy (Case No. 1395 of 1866, 30th January 1868), which laid down that a new statement of the law by the High Court was not a sufficient excuse for delay in applying for a review of a judgment. And it seems to us that if it is not an excuse for delay in applying for a review of a judgment, still less can it be an excuse for delay in appealing against a judgment. But, as we have already said, the characteristic of the judgment of the 6th of January 1866 was not that it laid down any new principle of law, or sanctioned any new interpretation of the law, but it was a decision between parties upon the facts of the case. It is true that the facts of the case were, if not precisely the same, at least very analogous to those obtaining in the case now before us; but that seems to us the greater reason why the decision of the 6th of January 1866 is no excuse for the delay. If, in the one case similarly situated with the other, he could, by diligence in applying to the High Court, obtain the remedy which he did in fact obtain, he might, in like manner, have obtained a similar remedy in all the other cases. And he might not only have appealed against the original remand order made in the 20 cases as he did in the one, but he might, at any rate, have appealed immediately upon the decision of the Deputy Collector on the 11th of September 1865; and had he done so, there cannot be any doubt that he would have obtained the benefit of the decision of the High Court of the 6th of January 1866. And whichever way the conduct of the plaintiff, now special respondent, is looked at, it seems to us that he is absolutely without any excuse at all for delaying to bring his appeal until two years had elapsed after the passing of the decree which is appealed against. In this view of the facts involved in these cases, as exhibited by the judgment of the lower Appellate Court, it seems to us that the Judge had no ground whatever to go upon when he arrived at the conclusion that the appellants before him had satisfactorily accounted for their not having come within the time prescribed by the Act. We, therefore, think that his decision admitting the appeal was wrong in law; and, consequently, that his final decree on appeal cannot be supported.

This being so, we think that this appeal must be decreed, and the decision of the lower Appellate Court reversed. The effect of this will be to confirm the decision of the first Court. The appellant must get his costs in this Court and in the lower Appellate Court.