(1870) 05 CAL CK 0010

Calcutta High Court

Case No: Rule Nisi No. 334 of 1870

Asrafannissa Begum		APPELLANT
	Vs	
Syad Inaet Hossein		RESPONDENT

Date of Decision: May 6, 1870

Judgement

Bayley, J.

I am of opinion that this rule ought to be discharged with costs. The ground of this application which is made, u/s 15 of the Charter Act, is that, whereas the lower Court admitted the review after a period of ninety days, without recording any reasons for having been satisfied that there was good and sufficient cause shown for the delay, the lower Court acted without jurisdiction. A case has been cited, Mahomed Gazee Chowdhry v. Dullab Bibi See Ante, p. 318, in which it is said to have been held that such an act would be without jurisdiction. Now, in the first place, that case was one of regular appeal, this is one u/s 15 of the Charter Act. I cannot admit, as we are asked to admit, the principle, that an application u/s 15 must necessarily be governed by dicta in regular appeals, nor that where one Judge of one Division Court passes an opinion different from that passed by another Division Court, it must be considered a conflict of decision, and necessitate a reference to a Full Bench. It is said that this is a case in which the Judge acted without jurisdiction, because, until he complied with the requisition of the law in regard to the admission of reviews after ninety days, that is to say, stated that he was satisfied that there was good and sufficient cause for the delay, he could not admit the application and try the case, and therefore had no jurisdiction. I think, however, that in this case the lower Court had jurisdiction, although it may have failed in actually carrying out all the particulars of the law. It is not in every case where a Judge does not comply with all the provisions of the law that he acts without jurisdiction, and it is clear that in this case the cross-litigation which was going on between the parties and the reasons which are recorded in the pleadings, viz. that the High Court decision in one case, might affect the rights of the parties in another, are circumstances which the Judge of the lower Court could, and it must be presumed he did, look to and consider a sufficient cause for admitting the review.

2. It has been held, by almost concurrent decisions of this Court, that ordinarily cases u/s 15 of the Charter Act should only be admitted when the Judge has refused a jurisdiction which he has, or exercised a jurisdiction which he has not. Without saying that the terms of this section do not enable us to go beyond that, I will simply confine myself to saying, following those decisions, that under the circumstances of this case, although the admission of the review by the Judge after the lapse of ninety days, without specifying any reasons for his being satisfied as to the reasonableness of the delay, may not have been in exact accord with the course of procedure prescribed, still it was not without jurisdiction; nor is it a case otherwise in which we should exercise the extraordinary powers vested in us u/s 15 of the Charter Act. I would discharge the rule with costs.

Markby, J.

3. I also think that this rule ought to be discharged. The facts of the case are peculiar. There were two concurrent suits, in one of which Inaet Hossein was seeking to recover the arrears of a monthly payment which he had bought in execution of a decree against Nazimannissa, and the other was a suit in which the person entitled to the monthly payment was seeking to set aside this sale. The Judge in appeal had disposed of both the suits in a manner which was adverse to the claim of Inaet Hossein. Inaet Hossein then appealed to this Court in one suit only, not being able to appeal in the other, as it was a suit to recover money below rupees 500. Then, when this Court on appeal reversed the decision of the Judge below in the case before it, the Judge thought it proper, although ninety days had elapsed, to give Inaet Hossein an opportunity of having what then became a manifest error in the judgment in the other suit corrected by way of review. This seems to me to be almost precisely the same thing as was done by Kemp and Glover, JJ., in Sutto Surrun Ghosal Bahadoor v. Tarini Churn Ghose 3 B.L.R., A.C., 287. Whether or not, if the order which the Subordinate Judge made in admitting the review were now before us on appeal, we should say that the Judge was right in making that order is a wholly different question. I would rather have said, with the greatest respect for the opinion of the two learned Judges, that the Judge was not right, but that is not a circumstance which should induce us to exercise the extraordinary power of superintendence which we possess u/s 15 of the Charter Act, and set aside the order of the Judge passed in the case now before us. It may not be easy to say exactly what degree of illegality in the proceedings of a Judge will deprive him of jurisdiction, nor is it in the least degree necessary that we should in this case exactly define what the limits of his jurisdiction are. As pointed out by Mr. Justice Bayley, our action u/s 15 is wholly discretionary; and looking to the peculiar circumstances of this case, and to the fact that the Judge was only trying to keep consistency between the two suits, in accordance with what the High Court laid down as the law, I am of opinion that we should not interfere in it. I may add that I should not be inclined to agree in the view which Mr. Justice Hobhouse is said to have taken in Mahomed Gazee Chowdhry v. Dullab Bibi Ante, p. 318 that this is an order which in any sense can be said to be made without jurisdiction.

(1) Before Mr. Justice Bayley and Justice Sir C.P. Hobhouse, Bart.

The 8th January 1869.

Mahomed Gazi Chowdhry and Another (Defendant) v. Srimati Dullab Bibi (Plaintiff).*

Baboo Srinath Das for appellants.

Baboo Nalit Chandra Sen and Moulvi Syad Murhamut Hossein for respondents.

Hobhouse, J.--The facts of this case on the sole contention now before us are these:--

On the 4th September 1865, corresponding with the 20th Bhadra 1272, the plaintiff, who is the respondent before us, applied, u/s 299 of Act VIII of 1859, to be allowed to sue as a pauper.

On the 22nd Bhadra 1272 (September 6th, 1865), the plaintiff was examined; and after such examination, a day was fixed for the hearing of the application on the question of pauperism under sections 305 and following of Act VIII of 1859. Evidence was subsequently taken on both sides on the question of pauperism, but that question was not at that time determined by the Court, but the Court on the 7th June 1366, corresponding with the 25th Jaishta 1273, rejected the plaintiff''s application to be allowed to sue as a pauper, the ground of rejection being that, within the meaning of section 304 of the Code of Civil Procedure, the claim was barred by the Statute of Limitation.

On the 7th May 1867, the plaintiff applied for a review of the judgment; that review was granted, and the plaintiff was permitted to sue as a pauper, and finally obtained a decree in his favor in the Court below.

The defendant, appellant, now before us, takes a preliminary objection to the entertainment of the suit. He argues that the refusal to permit the plaintiff to sue as a pauper was final; that the application for review was in the nature of a subsequent application of the like "nature"; and that within the meaning of section 310 of the Code, the Court had no jurisdiction to entertain and grant such application.

On the other hand, the plaintiff contends that the application was not in the nature of a second application for permission to sue as a pauper, but in the nature of an application for review; that the Court below had jurisdiction to entertain it, and so had jurisdiction to determine the suit.

The point has been very ably argued by the pleader for the plaintiff, Baboo Nalit Chandra Sen, and for myself I must say that his arguments impressed me at first sight convincingly, and that on a point on which I was in the first instance against him. But on a full consideration of the bearings of the case, we are compelled, I think, to give judgment against the plaintiff on another ground. We find, without expressing any opinion as to

whether the Court"s refusal to allow the plaintiff to sue as a pauper was final, or whether any application for review could or could not be entertained, that the application in question was not made within ninety days of the order to which it referred, and not only was this so, but no just and reasonable cause was stated, much less shown, to the lower Court why, after such a lapse of time, viz., eleven months, it should have entertained the application for review. It follows, therefore, that, in Shama Churn Chuckerbutty v. Bindabun Chunder Roy 9 W.R., 181, the lower Court had no jurisdiction to entertain the application for review, and had no jurisdiction, therefore, to entertain the suit founded on the admission of that application.

In this view of the case, I think that the plaintiff"s suit must fail; that the decision of the Court below must be set aside, and the appellant gel a decree with all costs of this Court and of the Court below.

Bayley, J.--I concur in thinking that the application for review was altogether too late; that no good and sufficient cause was shown for the delay; and that therefore the application could not be entertained.

I entirely concur with Mr. Justice Hobhouse as to the able manner in which the case has been argued by the respondents" pleader, Baboo Nalit Chandra Sen.

* Regular Appeal No. 18 of 1868, from a decree of the Judge Tipperah, dated the 10th September 1807.