

(1870) 04 CAL CK 0010

Calcutta High Court

Case No: Special Appeal No. 2021 of 1869

Syed Jafer Hossein and
Another

APPELLANT

Vs

Sheikh Mahomed Amir
and Others

RESPONDENT

Date of Decision: April 20, 1870

Judgement

Mitter, J.

The facts, out of which this special appeal has arisen, are briefly these:

The special appellant preferred a regular appeal to the Judge of Patna against a decision of one of the Subordinate Courts. The appeal was registered u/s 341 of the Code of Civil Procedure, and the respondent was duly summoned to support his decree. On the day of hearing, it was pointed out to the Judge that the date of the delivery of the stamp required for obtaining a copy of the judgment of the lower Court had been tampered with, and that if the real date were taken the appeal would be out of time. The Judge has come to the conclusion that this was really the case, and he has accordingly dismissed the appeal with costs. The special appellant contends that the Judge had no power to dismiss the appeal after it had been once registered u/s 341; and he further urges that although the Judge is correct in his finding as to the real date of the delivery of the stamp, the appeal would be still within time, inasmuch as it was really filed on a date earlier than that shown by the Judge's endorsement. We think that both these objections are futile.

In the first place, it is doubtful whether a special appeal would lie in such a case. The Judge has used the words "I dismiss the appeal," which is true; but the real meaning of his order is that the appeal should be removed from the file as having been presented improperly, i.e., after the period prescribed by the law had expired. The appeal has not been decided upon the merits, and, consequently, the lower appellate Court can hardly be said to have committed an error in law which may have produced an error in the decision of the case upon the merits." But whether we treat this case as an ordinary special appeal, or as a motion, it appears clear that the special appellant is not entitled to

the relief he seeks,

2. We will dispose of the second ground of special appeal, first, in order to see how the facts of the case really stand before us. With reference to this ground we observe, that the special appellant has not filed any evidence to support it. No affidavit of the facts is forthcoming, and we are simply asked by the pleader to direct an enquiry on the point. Now this point was never mooted in the Court below, for the contention raised before the Judge appears to have been confined to the date of the filing of the stamp. Whether the endorsement on the back of the memorandum of appeal is conclusive evidence as to the date of its presentation or not, it is perfectly clear that there is nothing on the record, as it now stands before us, to contradict it. It was made under the provisions of section 341, which peremptorily requires that the date of the presentation of every appeal should be endorsed on the back of the memorandum. The special appellant has not even attempted to show that there are any reasonable grounds for thinking that this endorsement is not correct, and the conclusion is therefore inevitable that the appeal was really filed after, "the time prescribed had elapsed.

3. Returning now to the first ground of special appeal, we observe that it resolves itself into two distinct questions, namely, first whether the Judge had any power to reject the appeal after it had been once registered u/s 341, supposing that there was no fraud on the part of the appellant, and, secondly, whether the Judge had such a power if the appellant was really guilty of the fraudulent alteration above referred to. We are of opinion that both these questions ought to be answered in the affirmative.

4. As to the first question, it is clear that the registration of an appeal u/s 341, is a proceeding of a purely ministerial character. It is true that there must be an enquiry under that section as to whether the appeal has been filed within time or not, before it is registered in the register of appeals; but this enquiry may be conducted either by the Judge of the appellate Court himself, or by an officer of that Court, which last mentioned individual must necessarily be an officer entrusted with ministerial duties only. The words of the section are as follows:

When a memorandum of appeal is presented in the prescribed form and within the time allowed, the appellate Court or the proper Officer of that Court shall endorse thereon the date of presentation, and shall register the appeal in a book kept for the purpose, and called the Register of Appeals.

5. Why, then, are we to ascribe to such a registration the force of a conclusive judicial determination between the parties upon the question as to whether the appeal has been filed within time or not? How, again, are we to reconcile this conclusion with the universal rule of law that no man can be prejudiced by an order which is passed in his absence unless he has wilfully neglected to appear? The law requires that appeals must be filed within a fixed time; and it is perfectly clear that this provision has been made, not for the convenience of the appellate Court or of the officer whose duty it is to register appeals u/s

341, but for the benefit of the respondent, who is justly entitled to be protected from the troubles and anxieties of an indefinitely prolonged litigation. Why then are we to suppose that the respondent can be deprived of this benefit by anything that may be done in his absence by a mere ministerial officer of the Court, either through mistake or otherwise. Supposing, for instance, that an appeal is filed more than twelve years after the date of the lower Court's judgment, and suppose also it is registered by the proper officer either through inadvertence or collusion. Can it be contended, for one moment, that the respondent would not be allowed, even in such a case, to come forward and show that the appeal ought never to have been registered at all? This, no doubt, is an extreme case of the kind, but it shows very clearly what is the real value of a registration u/s 341.

We do not wish however to rest our decision on this ground, as there is a case decided by a Division Bench of this Court Quare, 4 B.L.R. 84 which may, to a certain extent, be thought to militate against our view. According to the facts stated above, we see no reason to interfere with the conclusion which the Judge has arrived at on the question of fraud; and if he once introduce this element, this appeal must necessarily fail. All Courts of Justice have an inherent power to preserve the parity of their own files. Without such a power their proceedings would be valueless, and their records would be encumbered with any thing and every thing which fraudulent and designing men might choose to place upon them. The case of Shibnarain Ghose v. Hullodhur Dass 6 M.I.A. 207 appears to me to be conclusive on this point. In that case, the appellant had obtained special leave to appeal to Her Majesty in Council on an ex parte application. The respondent came forward, and filed a counter-petition asking the Lords of the Judicial Committee to dismiss the appeal upon the ground that the facts stated in that application were false. Their Lordships held that the respondent had, as a matter of course, "the right to present such a counter-petition, and they dismissed the appeal then and there without entering into the merits. It is true that the question of time was not raised in this case, but the principle involved is the same. Fraud vitiates the most solemn proceedings of Courts of Justice, and every order procured by fraud must be treated as an absolute nullity as soon as it is discovered. There is no difference on this point between the powers of the Judicial Committee and those of the ordinary Courts of Justice in this country. But at any rate, if the order passed by their Lordships in the case just now quoted was just and proper, the order passed by the lower appellate Court in this case, cannot but be regarded as equally just and proper. We have no doubt that the appellant is guilty of the fraud which has been imputed to him, and we look upon his plea as to the date of his filing the appeal as a mere subterfuge to get rid of the Judge's finding on that point.

We dismiss this appeal with costs.