
(1866) 09 CAL CK 0007

Calcutta High Court

Case No: Privy Council Appeal No. 350 of 1864 in Special Appeal No. 781 of 1861

Moharaja Dheraj
Mohatab Chand
Bahadoor

APPELLANT

Vs

Soudaminee Dossee

RESPONDENT

Date of Decision: Sept. 11, 1866

Judgement

Sir Barnes Peacock, Kt., C.J.

The charter of the High Court allows an appeal to the Privy Council "in any matter not being of criminal jurisdiction from any final judgment, decree, or order of the said High Court of Judicature at Fort William in Bengal made on appeal." The question is whether an order of a Division Bench, rejecting an application for a review of a judgment passed on appeal, is a judgment made on appeal. In this case a Division Bench heard a special appeal and then passed a decree on the case. An application was afterwards made for a review of the judgment. Under s. 378 of the Code of Civil Procedure, no review of judgment ought to be granted without previous notice to the opposite party, to enable him to appear and be heard in support of the decree of which a review is applied for. The application was made to a single Judge, and he thought it reasonable that the opposite party should be summoned. When the case came on to be heard, the Court rejected the application for the review; in other words, they would not grant a rehearing of the appeal. That was not an order made on appeal, but merely an order made on application to the Court to review their own judgment. If a review is admitted, then, under s. 380, the case is set down to be reheard, See 10 B.L.R. (High Court Rules), 16 and the order of the Division Bench upon the rehearing is a new decree, whatever may be the result of the rehearing. But as it is, the Court merely rejected an application to review their own judgment; and that rejection is not an order made on appeal. Consequently, the Court is not in a position to admit an appeal against that order. It cannot admit an appeal against the original judgment of the Division Bench, inasmuch as the petition of appeal was not presented within the period of six months prescribed by the rules of Her Majesty in Council on the 10th April 1838, § 1½ 1.

2. There is no hardship in this case. The learned Judge who referred the case has clearly pointed out that an application for review of judgment may be made after an appeal has been preferred to Her Majesty in Council, and before the proceedings in the suit have been transmitted (see Act VIII of 1859, s. 378). If the parties choose, they may apply specially to Her Majesty in Council; but we have no power to admit the appeal.

¹ See In the matter of the Petition of Rajkissen Sing, post, p. 605.

² Order in Council dated at the Buckingham Palace, 10th April 1838.

1. "That, from and after the 31st day of December next, no appeal to Her Majesty, her heirs and successors in Council, shall be allowed by any of Her Majesty's Supreme Courts of Judicature at Fort William in Bengal, Fort St. George, Bombay, or the Court of Judicature of Prince of Wales' Island, Singapore, and Malacca, or by any of the Courts of Sudder Dewany Adawlut, or by any other Courts of Judicature in the territories under the Government of the East India Company, unless the petition for that purpose be presented within six calendar months from the day of the date of the judgment, decree, or decretal order complained of, and unless the value of the matter in dispute in such appeal shall amount to the sum of tea thousand Company's rupees at least, and that, from and after the said 31st day of December next the limitation of five thousand pounds sterling, heretofore existing in respect of appeals from the Presidency of Fort William in Bengal, shall wholly cease and determine."