

(1911) 01 CAL CK 0012
In the Calcutta High Court

Basanta Coomar Goswami

APPELLANT

Vs

Kumudini Dasee

RESPONDENT

Date of Decision : 31-01-1911

Acts Referred:

Citation : (1911) ILR (Cal) 428

Hon'ble Judges : Stephen, J

Bench : Single Bench

Judgement

Stephen, J.—In this case I am asked to make an order upon the defendant to disclose certain documents and to allow inspection of them. The suit is one in which the plaintiff sues for commission in respect of a loan which was in fact never effected, but in respect of which the proposed borrower and lender were brought together. The defendant against whom the order is sought has already filed an affidavit of documents under Order XI, Rule 13. The plaintiff asks for discovery and inspection of the documents of which he has annexed a list to his affidavit.

2. He is met by an argument on the part of the defendant: that her affidavit of documents precludes any further application of this kind. This is an argument which I do not think is sustainable in this Court.

3. Looking at the policy of Order XI and at the language of Rule 18, para. 2, I do not think the defendant is thereby protected from an obligation to give inspection of other documents that may be proved to be in her possession.

4. Several English cases have been cited before me to show that the defendant's affidavit of documents is conclusive as to possession and also as to relevancy.

5. I am not prepared to say that the English practice is to be followed in all respects in this Court but I have not had any authority cited before me which I consider obliges me to hold that a statement in the usual form that an affidavit of documents mentions all relevant documents is to be taken as an answer to a subsequent application under Rule 18(2). I therefore cannot suppose that the

affidavit of documents under Rule 13 precludes an application under a subsequent rule.

6. I have considered the merits of the present application and I consider that most of the demands made in this case are of the nature of a fishing enquiry.

7. Possession as regards first item in the list annexed to the plaintiff's affidavit is denied by the defendant, and such denial as a matter of course must be accepted. The second item is clearly covered by the third. The engrossment there referred to shows that an offer had been made of the loan the negotiations of which form the subject matter of the suit, and I consider that the plaintiff is entitled to inspection of No. 3; No. 4 has been waived; and as to No. 5 possession has been denied; No. 6 and 7, I hold to be privileged; No. 8 I hold to be covered by the affidavit of documents; No. 9 possession is denied; as to 11 and 13, I hold that they are not shown to be relevant; as to No. 12 inspection is waived; No. 14 is privileged; No. 10 and 15 are covered by the affidavit of documents. As to No. 10, 17 and 18 possession is denied.

8. The result, therefore, is that this application is granted only with regard to item No. 3. The question of costs is reserved.