
(1921) 12 CAL CK 0011
In the Calcutta High Court

Bipin Behari Chattapadhyaya and Others	APPELLANT
Vs	
Jogendranath Bandopadhyaya and Others	RESPONDENT

Date of Decision : 05-12-1921

Acts Referred:

Citation : 65 Ind. Cas. 479

Hon'ble Judges : Panton, J;N.R. Chatterjea, J

Bench : Division Bench

Judgement

1. In this case, the lower Appellate Court dismissed the appeal evidently under Order XLI Rule 11. The order runs as follow?: "Heard Pleader. The appeal is summarily dismissed." It is contended on behalf of the appellant before us that the provisions of Order XLI, Rule 11, are controlled by those of Order XLI, Rule 31.

2. There is a divergence of opinion on the point in the several High Courts in India. In our Court, in the case of Rami Deka v. Brojo Nath Saikia 25 C. 97 : 1 C.W.N. 692 ,13 Ind. Dec. (N.S.) 66, where the judgment was "Suit laid at Rs. 480, value of buffaloes. Appeal rejected u/s 551, Civil Procedure Code", it was held that the dismissal of an appeal u/s 551. Civil Procedure Code, by a Court whose decision may be the subject of an appeal does not relieve the Court from the necessity of writing a judgment which, according to the provisions of Section 574 of the Code, should show the points raised, the decision upon those points and the reasons for deciding them. In the next case in our Court, Rakhal Chandra Tewari v. Satindra Deb Rai 5 C.L.J. 348, Maclean, C.J., (Caspersz, J., agreeing with him) quoted with approval the above case of Rami Deka v. Brojo Nath Saikia (I), but distinguished it on the ground that in the case before them there was substantial compliance with the requirements of Section 574 of the Code. In the case of Pachi Dasi v. Bala Das 2 Ind. Cas. 405: 13 C.W.N. 1031 Coxe, J., was of opinion that Section 551 of the Code was not controlled by Section 574. Richardson, J., on the other hand fully accepted the view of law taken in the two earlier cases, Both the learned Judges, however, were of opinion that in the case

before them the judgment recorded by the Subordinate Judge was sufficient. It appears from pages 1032-33 of the report that the facts of the case, the points for determination and the reasons for deciding them were stated, though briefly. The question whether the provisions of Section 551 are controlled by those of Section 574, therefore, did not arise for determination in that case and the observations of the learned Judges on the point must be taken as obiter.

3. In the Bombay High Court, in the case of *Puttapa v. Yellappa* 5 Bom. L.R. 233, the same view was taken as in the two earlier Calcutta cases. A contrary view was taken later in the case of *Tanaji Dagde v. Shankar Sakhamam* 12 Ind. Cas. 564 : 36 B. 116 : 13 Bom. L.R. 1002. That decision, however, was overruled by a Full Bench of the Bombay High Court in *Hanmant Rukhmaji v. Annoji Hanmant* 20 Ind. Cas. 966 : 37 B. 610 : 15 Bom. L.R. 765. But the decision of the Full Bench proceeded upon the ground that there was a Circular Order of the Bombay High Court by which the lower Courts were bound.

4. The Allahabad High Court, in the case of *Samin Hasan v. Piran* 30 A. 319 : 5 A.L.J. 300 : A.W.K. (1908) 115, dissented from the view taken by this Court in *Rami Deka v. Brojo Nath Saikia* 25 C. 97 : 1 C.W.N. 692 ,13 Ind. Dec. (N.S.) 66 and held that the provisions of Section 574, Civil Procedure Code, are not applicable in their entirety to the case of an appeal dismissed u/s 551 of the Code. In that case also, as appears from the report, there were some reasons stated for the judgment and not merely that the appeal was summarily dismissed.

5. We think we ought to follow the decisions of this Court and hold that the judgment of the lower Appellate Court in this case is defective and should be set aside.

6. The case will accordingly go back to the lower Appellate Court. As the Additional District Judge who summarily dismissed the case is not now at +, the appeal must be heard by the lower Appellate Court under Order XLI, Rule 11 and disposed of according to law.

7. The costs of this appeal, which we assess at one gold mohur, will abide the result of the appeal to the lower Appellate Court if the appeal is admitted under Order XLI, Rule 11. If the appeal is not admitted, the parties will bear their own costs.