

(1933) 02 CAL CK 0051
In the Calcutta High Court

Corporation of Calcutta

APPELLANT

Vs

R.C. Banerji

RESPONDENT

Date of Decision : 08-02-1933

Acts Referred:

Citation : AIR 1933 Cal 727a : 147 Ind. Cas. 204

Hon'ble Judges : Lort-Williams, J; Lord-Williams, J

Bench : Division Bench

Judgement

Lort-Williams, J.—Rule 36, Ch. 10, of the Original Side Rules provides as follows:

Suits and proceedings, which have not appeared in the Prospective-List within six months from the date of institution, may be placed before a Judge in Chambers, on notice to the parties or their attorneys, to be dismissed for default, unless good cause is shown to the contrary, or be otherwise dealt with as the Judge may think proper.

2. Formerly this was construed as meaning that, if a suit had not appeared in the Prospective List within six months from the date of institution, it might, subject to the discretion of the Judge in Chambers, be dismissed for default. The result was that such a suit was always thereafter in jeopardy, unless the plaintiff prosecuted it expeditiously.

3. But in Haribux Shroff Vs. Dwijendra Mohan Ghosh, , the Chief Justice decided, and C.C. Ghose, J., agreed, that this construction was as they expressed it, "impossible," and that the rule means that if at the time when the suit is placed before the Judge in Chambers" it is not in the Prospective List, and has not previously appeared in the Prospective List, it may be so dismissed. The result of this decision, if read literally, makes the rule practically useless. Any plaintiff can avoid its provisions by the simple expedient of putting his case in the Prospective List, taking it out again, and then proceeding at his leisure unhampered by any interference from the Court. Rule 7 provides that his attorney may, by requisition in writing to the Registrar, have his suit entered in the Prospective List on the

ground that it is ready to be heard. Rule 8 provides for its removal from the list."

4. Of course the defendant can take steps to expedite matters, but the existence of the rule is sufficient proof that such action cannot be relied upon.

5. It is true that the same procedure was possible even under the previous interpretation of the rule, so long as the requisition was made within six months from the date of institution. But greater courage or less conscience would then have been required to state that the suit was ready to be heard, when, in fact, it was not. Since the judgment, to which I have referred, the decision to print a "Special List" of suits liable to be dismissed under Rule 36 has been followed, with uncanny haste, and before the necessary notices can be served, by requisitions to place such suits in the Prospective List. The coincidence is too striking to be natural, though it is difficult to say whether, or how, plaintiffs have become aware of the impending inquiry. The explanation given, that this spate of requisitions is due merely to apprehension that owing to a change in the personnel of the Court greater expedition will be required from attorneys, though gratifying, cannot be accepted as sufficient.

6. This being the position I have to decide whether the Court is powerless to deal with what seems to be an abuse of its process. In my opinion, the judgment means that once a suit has been properly placed in the Prospective List, Rule 36 no longer applies; that is to say, if the suit was ready to be heard when the requisition was made. But that the rule applies to suits in which the requisition has been made improperly.

7. Applying this interpretation to the facts of this case, I find that the suit was instituted so far back as March 1931. The written statement was filed in May. Nine months afterwards, discovery was asked for and ordered, and plaintiff's affidavit was filed in May 1932. Nothing further was done, and inspection has not yet commenced. But on 3rd January 1933 notice was issued by the Registrar that the suit would be placed on the "Special List" for the 13th. This was served on the defendants' attorney on the 6th, but before it could be served on the plaintiff's attorney he wrote asking that the suit should be placed in the Prospective List as the same is ready for hearing." Thereupon the Registrar took the suit off the "Special List" and put it in the Prospective List. The defendant then applied to the Court asking why the suit, about which he had received notice, was not in the "Special List," and the Court ordered it to be restored. On 7th January the plaintiff's attorney wrote to the defendants' attorney asking for and offering inspection.

8. It is obvious that the suit was not ready for hearing on 6th January, when the requisition was made, and ought not to have been placed in the Prospective List. Placing it in the list was a mere subterfuge to enable the plaintiff to take advantage of the judgment to which I have referred.

9. In my opinion therefore the suit was properly placed in the "Special List," and, in view of the facts already mentioned, I think that it may, and ought to, be

dismissed for default with costs and I so direct.