

(1910) 05 CAL CK 0037

In the Calcutta High Court

Case No : Appeal from Order No. 261 of 1908

Dewan Amir Hossain Khan and Others

APPELLANT

Vs

Babu Nanak Chand and Others

RESPONDENT

Date of Decision : 05-05-1910

Acts Referred:

Citation : (1910) 05 CAL CK 0037

Final Decision : Dismissed

Judgement

Chatterjee, J.—The plaint in this case was filed on the 8th of February 1905 one day before the prescribed time-limit, on insufficient stamp. The Court granted one week's time for making up the deficit: the 15th of February was therefore the last day for the purpose. The Plaintiff however put in the deficit on the 16th of February--one day too late. The Court ordered that a petition for extension of the time fixed, by one day, might be filed and such a petition was filed on the 18th February and the case was registered on that date. The Defendants contended that the suit was barred by limitation and the Court of first instance accepted the plea and dismissed the suit. On appeal by the Plaintiff the learned Subordinate Judge has upset the judgment of the 1st Court and remanded the case for trial on the merits. It is contended in second appeal before us that the learned Subordinate Judge is wrong : that the Court was bound to reject the plaint on the failure of the Plaintiff to put in the required Court-fee on the 15th and that the order of the 18th February even if it could be construed as granting an extension of time was incompetent.

2. It is admitted that the Court could extend the time originally fixed if an application had been made within the 15th February. It is contended however that the Court could not grant extension ex poste facto and reliance is placed on the case of *Pudmanand Singh v. Ananta Lal* ILR 34 Cal. 20 F. B. : S.C. 11 C.W.N. 38 (1906). In that case a plaint had been filed on insufficient stamp on the 23rd June and time was given up to the 5th July for making up the deficit: there was no application for extension but the deficit was actually paid on the 9th July on

which day the plaint was verified also and then registered. The question put to the Full Bench was whether the Court could after registering the plaint reject it. It was answered in the affirmative but the learned Judges ordered that the plaint might be taken to have been filed on the 9th July and the order rejecting the plaint was set aside. The Chief Justice thought that the order of the 9th July might be taken as granting an extension of the time fixed, up to the 9th but the majority accepted the application of the Appellant to treat the plaint as presented on the 9th when the Court-fee was paid and the plaint verified. This last fact mentioned in the judgment of Mr. Justice Ghose is important, for the want of verification was a material defect in the plaint and the suit was considered as instituted when the plaint became complete. Besides there was no application for extension and, as pointed out by Mr. Justice Rampini, the order to register was made by the Court unconsciously of the default of the Plaintiff. The case of *Hun Mohun Chaketbutty v. Naimuddin Mahomed* ILR 20 Cal 41(1892) relied upon by the lower Court does not apply as there the payment was made within the time fixed by the Court. The case of *Brahmomoyi v. Andi Si* ILR 27 Cal. 376(1899) comes nearer and is against the Appellant but there also there was no application for extension and the Court did not think it was making an extension. The above case was referred to with approval in the case of *Haro Kumar Pal Chowdhuri v. Sheikh Shafalulla* 9 C.W.N. 845 (1905) but in that case also there was no application for extension of time. The question therefore as to whether the Court can extend the time *ex poste facto* has not been authoritatively decided in this Court. There is express decision in the Bombay Court in the case of *Bhugwan Das Bagla v. Haji Abu Ahmed* ILR 16 Bom. 263 (1891). Mr. Justice Telang acting on the principle of the decision of the Privy Council in the case of *Badri Narain v. Sheo Koer* ILR 17 Cal. 512 (1889), held that it was competent to the Court to extend the time fixed under sec. 54 even after the expiry of the time originally granted. That case and the case of *Rajabali v. Amir Hussein* ILR 17 Cal. I. P. C. (1889) are both on the construction of sec. 549 of the Civil Procedure Code; the wording however "shall reject" is common to sec. 549 and sec. 54 and there is no reason why the same rule of interpretation should not apply. Sec. 148 of the present C. P. Code expressly empowers the Court to extend any time fixed by it even after the expiry of the period originally fixed and this we think is legislative recognition of the rule laid down in the Bombay case and the cases on which the same was based. In the present case the default was brought to the notice of the Court which directed the filing of an application for extension and when that was filed the suit was at once registered. We think this was an extension and the Court was quite competent to grant it. That being so the provisions of sec. 28 of the Court Fees Act operate in favour of the plaint dating back from the 8th of February and the suit is not barred by limitation. The appeal is therefore dismissed with costs one gold mohur.

Vincent, J.—I have read the judgment of my learned colleague and I agree that in the circumstances of this case the appeal should be dismissed with costs for the reason stated.