

(1923) 08 CAL CK 0021
In the Calcutta High Court

Gobind Das Nath

APPELLANT

Vs

Nritya Kali Dasi

RESPONDENT

Date of Decision : 17-08-1923

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 41 Rule 22

Citation : AIR 1924 Cal 874

Hon'ble Judges : Mookerjee, J

Bench : Division Bench

Judgement

Mookerjee, J.—This application made by the learned vakil for the appellant raises a question as to the true effect of the second paragraph of Rule 25 of chapter 9 of the rules of this Court in the Appellate Side. The first paragraph of the rule provides as follows. "Every such respondent shall within two weeks after service upon him of the notice required by Rule 23 deliver to the Deputy Registrar a list, in the form in Rule 16, of the papers, other than those inserted in the appellant's lists and relevant to the subject-matter of the appeal, to which such respondent desires that reference shall be made by the Court at the hearing of the appeal, and which shall be inserted in the paper book at such respondent's expense. Such list shall be termed "The respondent's List." The second paragraph provides that when the respondent intends to take any objection to the decree which he could have taken by way of appeal and the taking of which is subject to the proviso contained in Order 41 Rule 22, Civil Procedure Code, any papers relevant to maintain this objection shall be included in such respondent's list. In the case before us the appeal is approximately valued at Rs. 1,000. The cross-objection taken by the respondent is valued approximately at the same figure. The appellant has filed a list of papers as required by the rules and the estimated costs for preparation of paper book on this basis exceeds Rs. 3,000. The respondent has filed a list which apparently is the respondent's list, namely, the list of papers which he considers necessary for reference at the hearing of the appeal. But as he has taken a cross-objection he is, under the rules, bound to include in his list all papers which are relevant to maintain the cross-objection.

The first paragraph of the rules makes it clear that there are no papers common to the appellant's list and the respondent's list. The second paragraph, which requires the respondent to include in his list, any papers relevant to maintain his cross-objection, shows that there may be papers common to this list and the appellant's list. It has been urged that even if this were carried out, the respondent would not be liable to bear the costs of translation and printing of such common papers under Rule 38 which it has been suggested is applicable only to distinct appeals. If that be the correct view of the scope of Rule 38, the contingency which has happened is not expressly provided for, and the Court is clearly competent to give such directions as are justified by the circumstances of this case. The obvious course to pursue, when there are papers common to the appellant's list and the special list of the respondent with reference to his cross-objection, is that the costs must to that extent be apportioned. We accordingly direct the respondent to comply with the requirements of the second paragraph of Rule 25 and to put in a list of all papers relevant to maintain the cross-objection. If such list contains papers already included in the appellant's list, in respect of papers common to both lists, there will be an apportionment.

2. The appellant has stated that he is not in a position to spend Rs. 3,000 on paper book in support of an appeal valued at Rs. 1,000. He has expressed a desire to abandon many of his grounds of appeal and to have a less costly paper book. He has further pressed for leave not only to put in a revised list of papers requisite for an appeal so restricted, but to file in Court, on the day the Court re-opens after the long vacation type-written copies of the necessary papers for the use of the Court and the respondent. In the circumstances of this case we permit the appellant to adopt this course. The revised list will be put in on Monday and the paper book on that basis will be filed on the day the Court re-opens after the long vacation.

3. A copy of the revised list will be furnished by the appellant to the respondent on Monday so as to enable her to decide what course she should adopt. The appellant will present to the Court on Monday next not merely the amended list, but also an application setting out the grounds in the memorandum of appeal which will be abandoned.

4. If the appellant fails to file in Court on the first day after the long vacation the paper book as undertaken the appeal will automatically stand dismissed with costs and in that event the costs will be assessed at two gold mohurs.