

(1962) 01 CAL CK 0015
In the Calcutta High Court
Case No : Appeal No. 101 of 1956

Gour Mohan Sen

APPELLANT

Vs

Ganesh Chandra Sen and Others

RESPONDENT

Date of Decision : 10-01-1962

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 151

Citation : 66 CWN 810

Hon'ble Judges : Bose, C.J.;Debabrata Mookerjee, J

Bench : Division Bench

Advocate : A.K. Hazra, for the Appellant;D.K. De and Pratima Banerjee T.P. Das for the Deity, for the Respondent

Final Decision : Dismissed

Judgement

Debabrata Mookerjee, J.—This is an application on behalf of one of the defendants in an Originating Summons for rehearing of an appeal (being Appeal No.101 of 1956) disposed of by this Bench on April 13, 1959, the appeal was brought from a decree of Mallick, J. in the summons proceedings.

2. The present application does not purport to be one u/s 151 of the CPC but is in effect and substance an application under that section inviting this Court to exercise its inherent power to secure the ends of justice and to prevent abuse of the process of the Court. The grounds upon which the application has been based will presently appear from the recital of facts leading to the Originating Summons, its disposal by the trial Judge and the eventual dismissal of the appeal from the decree made by him.

3. One Bonamally Sen established at his dwelling house at 5, Madan Dutt Lane a Deity Sree Sree Iswar Gopal Jiu and dedicated the premises for its location and worship subject to the right of residence of the Shebaites who were his sons and heirs in the male line and their respective families. By a deed of settlement dated December 2, 1902, the premises were so dedicated and they were conveyed to

his five sons who became the trustees. Certain terms and conditions were laid down by the settlor one of which was that, during his life-time, he would carry on the worship and the periodical festivals and, upon his death, the trustees or the Shebaites should continue the worship and the festivals.

4. It was declared that the trustees will have the right of residence with their respective families in the premises on condition that they contributed equally to the expenses and charges of worship and festivals, payment of rates and taxes and of necessary repairs. The condition was made more explicit by the addition that neglect or refusal to make the contributions will entail forfeiture of the right of residence of the trustees or Shebaites concerned. Another condition attached to the settlement was that the trustees will have no power to sell, mortgage, charge or in any way encumber the property.

5. The last of the surviving original trustees died in 1946 and, no appointment having been made of a new trustee, an amicable arrangement appears to have been arrived at whereby each branch of the family agreed to contribute equally towards meeting the charges, expenses and out-goings on equal shares. The plaintiff in the originating summons Ganesh Chandra Sen acted as the de facto manager collected the contribution and looked after the property.

6. In the course of time, his authority to manage the property appeared to have been doubted and difficulties arose in matters of sheba-puja as well as in the matter of collection of contributions. There was almost a deadlock when the said Ganesh Chandra Sen took out the Originating Summons in June, 1954 in the Chambers of the learned Judge and prayed for answer of the following questions in the summons;

"(a) Whether the plaintiff has any authority to act as trustee;

(b) Whether the parties other than the Deity defendant are bound to make contributions to the plaintiff acting as aforesaid;

(c) Whether a nephew, being a sister's son, and his family or a married daughter or her children may be included among residence in the said dwelling house;

(d) Whether any of the Shebaites not in actual residence in the said dwelling house can keep portions thereof locked up;

(e) Whether the resolutions made at meetings of the Shebaites are binding upon Shebaites dissenting or being absent therefrom."

7. It was made plain that the disputes and differences between the Shebaites who were the beneficiaries had reached a point necessitating intervention by an application under Chapter XIII of the Original Side Rules and the questions formulated were submitted to obtain resolution of the disputes between them.

8. The defendants including the applicant Madhab Chandra Sen who are the heirs of the settlor appeared in obedience to the Judge's summons and each of them filed affidavit in opposition to the application on which the summons had been

originated. Only the second applicant before us named Sm. Rashmoni Sen, the wife of the first applicant was not before the trial Judge and, consequently, no affidavit was filed on her behalf. Indeed, she has come into the proceeding for the first time in this application. The Deity itself was represented in the proceedings by a guardian-ad-litem duly appointed.

9. No useful purpose would be served by dealing the diverse statements made in these affidavits in opposition. Suffice it to say that the learned Judge, on a consideration of them all, came to the conclusion that there had been disputes and differences threatening complete deadlock in the management of the trust property involving discontinuance of the sheba-puja of the deity.

10. Some of the defendants had left the premises and removed themselves elsewhere; at the same time, they retained possession of the rooms in their occupation by keeping them under lock and key. Others again continued to live but there was not only unpleasantness but positive bitterness between them which caused considerable difficulty in making the collections which were essential to carry on the sheba-puja. The number of beneficiaries who were the descendants of the settlor having enormously increased, it became extremely inconvenient to house them all in the dedicated premises. The allegation was that rates had fallen into arrears; the premises badly needed repairs which were not carried out.

11. One of the defendants Probodh Chandra Sen suggested in his affidavit that the trust property should be sold and the sale-proceeds invested in Government promissory notes from which regular income might be derived and the sheba-puja carried on according to the pala or turn of worship. The Deity, it was suggested, should remain with the paladars during their respective turns of pala.

12. The Deity itself represented by the guardian-ad-litem stated that the family of the settlor having enormously increased it became urgency necessary that a scheme should be formulated by the Court so that due performance of its sheba-puja might be ensured. The Counsel appearing on behalf of the Deity stated that, in the circumstances of the case, he would leave the Deity's interests entirely in the hands of the Court.

13. Considerable acrimony appears to have been roused between a certain section of the beneficiaries and another represented by Ganesh Chandra Sen and his brothers, on the ground that the latter had acquired the neighbouring premises No.6, Madan Dutt Lane and opened doors and windows infringing the easement rights of the adjacent trust property. The suggestion was that the act of the plaintiff and his brothers had resulted in depreciation of the trust property and motives were attributed on that account for commencing the proceedings by originating summons.

14. Upon materials such as these, the learned Judge came to the conclusion that the suggestion made on behalf of one of the defendants might reasonably be accepted, namely, that the trust property should be sold. Such sale, the learned

Judge held to be in the interest of the Deity itself and was in his opinion, the only means of upholding the trust. The learned Judge took into account the objections of some of the parties before him as to the validity of the trust deed itself; but on a consideration of the document by which the trust had been created, he reached the conclusion that despite obvious faults of draftsmanship, the settlor's intention appeared to be unequivocal and, accordingly, the learned Judge upheld the trust and found that it could only be continued if the property was directed to be sold and a proper scheme framed for the purpose of continuing the sheba-puja of the Deity. In his opinion there was a valid trust despite certain provisions which appeared to him to be not strictly legal. He found that there was a complete deadlock in the management of the trust estate and the only way in which the trust could be saved was to direct of the trust estate and to frame a scheme in furtherance of the intentions of the settlor. The words actually used by the learned Judge are these:

"., in my judgment a scheme has got to be framed whereby money should be provided for the regular worship of the deity. At the same time interest of all the members of the family must be protected. It would be an act of partiality if some of the members are allowed to get the benefit at the expense of the others. Taking everything into consideration, therefore, I am of the opinion that the best way of framing a scheme in justice to all parties concerned is to effect a sale of the trust property. It may appear paradoxical at first sight that this should be so but no mature consideration I find no alternative other than sale. So far as the deity is concerned if the property is sold and the sale proceed is invested in proper securities, the deity will have no difficulty in getting the necessary money wherewith the Debseva can be carried on. The only thing that will affect the deity is that the deity will lose the right of residence. In one of the affidavits a party has suggested that the deity can reside with paladar for the time being. I think that is a very sensible suggestion and it should be incorporated in the scheme so that even though the deity loses the residence in this particular premises it is necessary will have accommodation at the house of the respective Shebaites in whose custody it will remain during their respective period of worship. In my judgment the sale of the house would not be against the real interest of the deity."

15. In this state of facts the learned Judge thought that the only way to save the trust would be to direct a scheme to be framed. He, accordingly, appointed a Special Referee and ordered him to sell the trust estate and invest the proceeds in Government securities in the name of the trustees to be appointed. The details of a scheme were directed to be drawn up. The plaintiff in the Originating Summons having made an offer to purchase the trust property, the learned Judge directed that the same might be sold to him subject to the opinion of a valuer who was named by the learned Judge himself.

16. Having thus directed a scheme to be drawn up and given a decree for it, the learned Judge thought that it was not necessary to answer the questions raised

in the Summons. It appears that the parties to the proceedings had thereafter several meetings and conferences for the purpose of determining the valuation of the property and the Special Referee appointed by the learned Judge entered upon his duties. Many of these meetings were attended by most of the defendants including one of the present applicants Mahadeb Chandra Sen. The original valuation of Rs.71,000/-, we are informed was eventually raised to about Rs.95,000/- after Ganesh Chandra Sen and his brothers had already deposited with the Special Referee a sum of Rs.71,000/- for the purpose of acquiring the trust property.

17. During the proceedings before the learned Judge, the applicant Madhab Chandra Sen was represented throughout. He was, of course, jointly represented with several other defendants and his present complaint is that in consequence of such joint representation, his case went by default before the learned Judge. We shall return to this aspect of the matter later.

18. It appears that one of the defendants Gour Mohan Sen was dissatisfied with the decree made by the learned Judge and he took an appeal which was disposed of by this Bench, which was differently constituted then, by a judgment and order dated April 13,1959. The Appeal Court considered the grounds of objections to the decree made and came to the conclusion that the appeal was without merit and dismissed the same.

19. At this stage, it is necessary to say that in the appeal the applicant Mahadeb Chandra Sen was one of the party-respondents. Initially he appeared with others through a Solicitor to resist the appeal. But before the appeal was actually heard, he took a change of Attorney and, in fact, entered appearance in person presumably on the ground that he had a special case to make which was likely to suffer if allowed to be made jointly with others. When the appeal was actually called on for hearing, the applicant Mahadeb Chandra Sen did not appear and, since he had withdrawn the power of attorney and did not himself appear in Court, he could not be heard. His wife, the other applicant, was not a party to the appeal. Accordingly, the Court of Appeal after having heard the parties which appeared before it came to the conclusion that the learned Judge was right, in the peculiar circumstances of the case, to have ordered sale of the trust property and directed a scheme to be drawn up for the sheba-puja of the Deity. In the appeal the Deity was duly represented by Counsel and its interests were left to Court which Counsel thought would be best safeguarded if they were so left.

20. The Appeal Court recorded its regret that events had happened which made it impossible to give effect to the full intentions of the settlor. It agreed with the findings recorded by the learned Judge that there was a deadlock in the management and danger of discontinuance of the sheba-puja of the Deity; it noticed that the trust deed provided for location of the Deity in the dedicated premises, but endorsed the view of the trial Judge that the only way to ensure continuance of the Deity's sheba-puja was t direct sale of the trust property which obviously involved disturbance of the Deity's location in the premises. The

alleged invalidity of the trust deed was taken into account, but the Court in effect negated it and held that the only way to save the trust was the way adopted by the trial Judge and in that view dismissed the appeal.

21. As indicated, the appeal was disposed of on April 13, 1959, and this application for a rehearing was filed by the applicant Mahadeb Chandra Sen on September 15, 1960. In this application, his wife Sm. Rashmoni Sen has joined him and she appears in the proceeding now for the first time. The complaint is that both the Trial Judge and the Court of Appeal misdirected themselves in thinking that it was open to the Court of direct sale of the trust property. The sale, it is said, involves complete disregard of an inalienable provision in the trust deed which located the Deity in the premises; the interests of the Deity have been given a complete go-by and the sale has been brought about in consequence of the manipulations of Ganesh Chadnra Sen and his brothers, one of whom took out the Originating Summons; the obvious object of the sale is to acquire the trust property which by reason of its contiguity to No.6 Madan Dutt Lane has a special value to them, that numerous persons are interested in the trust estate all of whom belong to the family of the settlor and the deed of trust having clearly provided for residence of members of that family, they could not be deprived of their right without being heard at all. The complaint is that in the Originating Summons, all of these persons were not represented; there has been fraudulent suppression of facts made with an ulterior motive in consequence of which the Trial Judge as well as the Court of Appeal was misled into making wrong orders; that the decree made by the Trial Judge and affirmed by the Court of Appeal was without jurisdiction having been so made in an Originating Summons in which no evidence was called and no one was heard except by means of affidavit evidence; that the facts of the case were of an extremely complicated nature which required full investigation by means of oral and documentary evidence and they could not conveniently be disposed of in an Originating Summons; the Trial Judge went beyond his powers in making a decree without ascertaining the facts which might well have been the foundation of a scheme decree and misconceived the entire procedure contemplated in Chapter XIII of the Rules of this Court by declining to answer the questions raised in the summons.

22. It must be said at the very outset that the questions now raised in this application are questions which could properly have been dealt with by the Appeal Court if raised before it. Many of them were in fact considered by that Court which came to the conclusion that none of them had any substance. One of the main questions sought to be reagitated in this application relates to the jurisdiction of the Court in an Originating Summons. It is said that the Trial Judge had no power to make a decree without going into facts and had no right to refuse to answer the questions raised in the summons. This criticism was considered and dealt with by the Appeal Court in these words:

"The real question for decision in this appeal is whether the order for sale is a

proper order in the circumstances of the case. Mr. Pal, learned Counsel for the appellant tried to convince us that the Judge had no jurisdiction to make such an order. With this I am unable to agree. The rules of this Court as set out in Chapter XIII of the Original Side Rules make it clear that the Court may frame a scheme for the administration of the Trust. It is true that ordinarily the administration of the trust of such a nature would not be made by sale of the property. There may however be cases where sale may be necessary and if the Trial Judge is justified in his view, apparently held by him, that the only way of preserving the deity's sheva-puja was by sale of such properties, it cannot be said that he had no jurisdiction to make an order."

23. This finding is challenged before us and reliance is placed upon a Bench decision of this Court in the case of Sachidnra Nath Chatterjee v. The Official Trustee of West Bengal and Ors. (1) 65 CWN 649, in aid of the proposition that the Court has no power to direct alterations to be made in the original deed of trust by a new deed; far less does it possess such power in a proceeding under Chapter XIII of the Original Side Rules. In that case, there appears to have been directions given which made substantial alterations in the original trust deed. Surely, that is not the case here. There has been no substitution of the terms of the trust deed. All that the Trial Judge and the Appeal Court did was to consider and construe the trust document in order to give effect to the dominant intention of the settlor. The Courts found for a fact that the only way to save the trust was to direct sale of the property in which the Deity was located. That involved disturbance of location of the Deity. But however much that might be regretted, that course appeared to the Courts to be unavoidable if the sheva-puja of the Deity were to be continued.

24. The order directing sale of the property has been challenged in this application in that it militates against an excess provision in the deed of trust. The sale is objected to on the ground that it involves disturbance of the Deity's location and it is said that the will of the Deity was not ascertained before the sale was ordered. It is true that the sale is not countenanced by the deed; but if the sale was not ordered, according to Trial Judge and the Appeal Court, the settlement, would fail and the sheva-puja would be terminate. It is not right to say that the idol's will was not consulted. The idol was represented throughout in the proceedings before the Trial Judge as well as before the Court of Appeal. Reliance is placed upon a decision of the Judicial Committee in the case of Pramatha Nath Mullick v. Pradyumna Kumar Mullick and another, (2) 52 IA 245 for the proposition that the wishes of the idol cannot be ignored. In that case the idol was not represented and, therefore, the Judicial Committee directed that in order that a scheme might properly be framed, the wishes of the idol required to be consulted; nor could it be said that there is substance in the other contention that a large number of descendants of the original settlor not having been made parties in the Originating Summons and not having been heard, no order could be made behind their back. The case of Pramatha Nath Mullick has again been relied upon in this context in support of the contention that even the female

members of the settlor's family were required to be heard before a scheme decree could be framed. It does not appear clear from the trust deed itself as to what extent the right of sheva-puja was secured to the female members of the family however remote from the original ancestor or settlor. The alleged omission to make others parties appears to have been imparted and added significance in view of the fact that the applicant's wife Rashmoni Sen has been brought in the proceedings for the first time in this application before us. It is interesting to note that at no stage of this litigation was the complaint of non-joinder of parties ever made.

25. On the question of want of jurisdiction, reliance is placed on *In re Robinson, Pickard v. Wheeler*, (3) 31 Ch. Div. 247 where it was held that in an Originating Summons, the Court can only approve of a sale that executors and trustees of the will or deed could have made themselves. Apart from the question of construction of the rule involved in this decision, there is one distinguishing feature which cannot be lost sight of. The Court made it clear that if the sale was to take place, there would be no trust left to administer and it is not easy to see how far this aspect of the matter weighed with the Court in coming to the decision that it did. The actual words of the learned Judge may be usefully noticed:

"If this summons is to be treated as expressly asking for a sale under Rule 1 of Order II, I am of opinion that it is not a proper originating summons under Rule 3 of Order LV. It was not intended that that rule and Rule 1 of Order LI. should be combined in this way, or that the Court should have a power of selling an infant's property which it never had before. There are no trusts to administer, and I think I can only approve of such a sale as the executor could have previously made himself."

26. Assuming for a moment that in the case before us the Trial Judge as well as the Court of Appeal went wrong in holding that a sale could be ordered of the trust property, it would merely be a question of erroneous construction of the Rules of the Court governing the proceeding in which the sale was ordered. That would surely not involve the question of jurisdiction. An error in disposing of a matter where jurisdiction exists is entirely different from want of jurisdiction. This application being in essence one u/s 151 of the Code of Civil Procedure, the only question that might with any sense of propriety be raised is the question of lack of jurisdiction. It cannot be argued in this application that the Court concerned went wrong and that wrong requires to be remedied. This Bench cannot possibly sit in judgment over its own previous deceased. It has no authority to do so. It can only entertain an objection when it is founded upon complete want of jurisdiction. It must be said that the applicants have not been able to make out any case whatever from which it could be said that either the Trial Judge or the Appeal Court acted without jurisdiction and went beyond their powers, the former in making the decree, the latter in affirming it.

27. It is to be observed that the applicant Mahadeb Chandra Sen had no doubt

the right of canvassing the questions sought to be raised in this application before a superior Court. He could challenge the appellate decision before the Supreme Court. He did not prefer an appeal to that Court but chose instead the devious way of re-agitating the questions already disposed of by means of an application u/s 151. Even this application has been preferred more than a year after the disposal of the appeal. In an application for re-hearing, the Court has always to take into account the circumstances in which the application comes to be made. It is to be recalled that the applicant Mahadeb was before the Trial Judge right throughout. He was also before the Appeal Court; but having felt doubtful as to whether his case would be adequately put before that Court, he took a change of attorney, filed the warrant himself and proposed to appear and plead his own case. He now says in his application that after having obtained a change, he had been expecting fresh intimation of the hearing of the appeal from some of the respondents between whom and himself there was no love lost. He wants the Court to believe that even after his sad experience with some of the members of his own family, he still thought it prudent to depend upon their good services and to expect that they would in time intimate the date when the appeal would be heard so that he might be able to appear before the Appeal Court and place his case before it. It is remarkable that while trying to say that he depended upon the good offices of his relatives who had deceived him in the past, he still trusted them and continued in the hope that they would give him timely notice of the date of hearing of the appeal. At the same time he says that he was unwell. Possibly, he means to say that he was too ill to attend Court at the time of hearing of the appeal. These appear to us to be inconsistent pleas and a Court dealing with an application for rehearing on the ground that justice has been denied cannot but be slow in accepting statements such as these. The records indicate that the appeal had been appearing in the Pre-emptory List of hearing for ten days and yet the applicant Mahadeb took no care to inform himself of the stage which the appeal had reached. In order that his complaint that he has been denied a fair hearing might acquire additional strength, it seems to us that he has joined in this application his wife Sm. Rashmoni Sen whose case seems to be that she had been kept from the knowledge of these proceedings for years and years and she came to know of them for the first time from her husband, only in August 1960. We have no right to assume that the husband and the wife lived apart. To say the least, it taxes one's credulity to the utmost to believe that she should have no knowledge of what had been happening either before the Trial Judge or before the Appeal Court until August 1960. We have no manner of doubt that the applicant's are now trying as a last resort to obtain reversal of the decrees made by this Court by means of an application for re-hearing of the appeal. It would, in our view, be extremely improper to encourage such an application and we are clearly of the opinion that instead of trying to avail of other means known to the law, the present application to obtain a re-hearing of the appeal has been hit upon as an easy substitute to obtain redress of certain fancied grievances. If Sm. Rashmoni Sen has any grievance, she has perhaps her remedies elsewhere. She was not a

party to the Originating Summons. Consequently, she may perhaps say she is not bound by the decree made. Nor was she a party in the appeal. She would be quite free to seek her remedy elsewhere if she at all felt aggrieved by the decision of this Court, if, of course, such remedy is at all open to her as to which we express no opinion.

28. It is interesting to note that during the course of argument, Counsel for the applicants suggested that the present application for rehearing might be treated as an application for review. The application does not purport in terms to be one for review of the order of the Appeal Court. We are unable to accede to this request. Review is allowed on known grounds and it is only permissible when new and important materials which after exercise of due diligence were not in the knowledge of the applicant and could not therefore be used by him at the time when the decree was made; or if there is a mistake or error apparent on the face of the record or any other sufficient reason which may induce the Court to review its previous order. "Sufficient reason" has been interpreted to mean sufficient of the kind analogous to those specified in Rule 1 of Order XLVII, namely excusable failure to bring to the notice of the Court new and important matter or error apparent on the face of the record. The words must be taken *ejusdem generis*. Nothing has been said before us which can possibly be compressed into any of the alternatives mentioned in Rule 1 of Order XLVII. No new discovery of important matter or evidence has been made. No error apparent on the face of the record has been pointed out and certainly, in our opinion, no sufficient cause has been established to entitle this Court to review its previous order. There is besides another difficulty in the way of the applicants. An application for review requires to be made within the time limited by law. That time is long past and nothing has been said which might incline this Court to hold that there exist sufficient grounds for not making the application earlier, treating the application as one for review after condoning the delay. We have indicated that this is not an application for review and, even if it were treated as one, the conditions for review have not been established. We have, therefore, only to see whether the applicants can be said to have any case on the footing that the Court should interfere *ex debito justitiae* for the purpose of doing complete justice between the parties in the exercise of its inherent powers u/s 151.

29. As we have said, this Court cannot revise its own order and has no power to appraise the correctness or otherwise of the order made on April 13, 1959. Even assuming for the moment that the Trial Judge as well as the Court of Appeal went wrong on matters of law, this Court has no power to rectify the mistakes and correct the errors. The applicants' remedy lay clearly in an appeal before the superior Court which he had the right to enter since the judgment was rendered against him. He did not avail himself of that right. The question then arises whether it has been established that the Trial Judge or the Appeal Court exercised jurisdiction which he or it did not possess. That question has already been answered. In our view, the trial Court as well as the Appeal Court acted

clearly within jurisdiction and it matters nothing, so far as this application is concerned, whether the decisions they have rendered are right or wrong.

30. The scope of an application for rehearing u/s 151 has been the subject of numerous judicial decisions. It is unnecessary to refer to them. Suffice it to say that the Courts have always been guided by the principle that where authority has been exercised in excess of jurisdiction or where there has been complete want of jurisdiction, the Court may in appropriate case exercise its inherent powers in the interests of justice and remedy a wrong for which the Court is responsible. Section 151 does not give new powers. It merely preserves those that have been given to the Court; and when the Court finds that it has acted to the detriment of a party before it the consequence of which has been that it has wronged him, it will in such a case remedy the wrong in the interests of justice.

31. This Court has in the past clearly expressed itself as to the scope and contents of Section 151. That section, it has been held, cannot be invoked to override the specific provisions of law. The question has not infrequently been raised in connection with applications under Order IX, Rule 13 where it is found that no sufficient cause exists for non-appearance on a date of hearing involving the consequence that the suit is decreed ex parte; such ex parte order cannot be set aside by resorting to section 151. (See *haridas Mukherjee v. Bejoy Krishna Das*, (4) 34 CWN 222; *K. B. Dutt, Receiver v. Shamsuddin Shah Shahab*, (5) 34 CWN 419). Chief Justice Rankin expressed himself on one occasion in strong terms and said that it was not open to anyone to enlarge the scope of Rule 13 of Order IX by "talking about Section 151." In similar circumstances, Chief Justice Chakravartti held in the case of *Tulsiram Bhagwandas Vs. Sitaram Srigopal*, , that the Code was exhaustive so far as it went and as respects matters for which it expressly provided, there was no room for the exercise of any additional jurisdiction u/s 151. The learned Chief Justice recognised that on rare occasions it had been held that the Court could act u/s 151 even when the specific provisions of the Code did apply; but he thought that the other view, which was the better view, that where specific provisions existed, no recourse could be had to Section 151. In the present case, the applicants, at any rate one of them, had his remedy by way of an appeal. The right of appeal is a valued right and if he did not avail himself of that, he or his co-appellant cannot be permitted to circumvent the provisions of the law by means of an application u/s 151. It is all very well to say that there is no form of injustice which the Court cannot remedy; but it must be borne in mind that the law does not encourage disregard of the prescribed procedure for righting a wrong.

32. The applicants have called attention to a decision of the Privy Council in the case of *Syud Tuffuzzool Hossein Khan v. Rughoonath Pershad and Ladlee Pershad*, (7) (14 MIA 40) in aid of the proposition that a Court has the power to remedy wrongs of all kinds in the exercise of its inherent jurisdiction. In this case what happened was that under a remit from the Privy Council to the Court of First Instance to refer to arbitration, with the consent of the parties, the accounts

of a partnership Firm, a reference was duly made to Arbitrators. Before any Award was made, the "rights and interests" of one of the parties in the Award were by Order of the Court sold by auction in satisfaction of a decree against him made in another suit by a third party. It was held that the expectant claim under an inchoate Award was not property and was not saleable in execution of a decree. The Judicial Committee held that an expectant Award was a thing utterly incapable of being estimated or valued. It was vague, uncertain and unmeaning and if such sale was allowed to stand, the Court would be opening the door to fraud. In such circumstances, the Court held that it had power to right the wrong for which it had been responsible. This decision is perhaps typical of the circumstances in which the Court would be justified in exercising jurisdiction u/s 151 of the Code of Civil Procedure. We have no manner of doubt that the present case is not covered by that section and we cannot possibly accede to the request that the appeal should be reheard. Although there have been allegations of misrepresentation and fraud, we are not persuaded that any fraud has been perpetrated upon the Court.

33. The application must be refused and it is accordingly dismissed. The applicants will pay to sets of costs to be divided among the three sets of appearing respondents.

Bose, C.J.

34. I agree.