
(1942) 05 CAL CK 0023
In the Calcutta High Court
Case No : Civil Rule No. 597 of 1941

Hari Narayan Mukherjee

APPELLANT

Vs

Hari Pada Misra

RESPONDENT

Date of Decision : 21-05-1942

Acts Referred:

Citation : (1942) 05 CAL CK 0023

Judgement

Henderson, J.—This Rule has been obtained by the Petitioner and is directed against an order of the Small Cause Court Judge rejecting an application under sec. 36 (6) of the Bengal Money-Lenders Act. It is not disputed that the decree passed infringes the terms of the Money-Lenders Act. The learned Judge however held that the promissory note upon which the suit was based was executed on account of a commercial loan. The Petitioner is a doctor. The finding of fact is that he borrowed the money in order to equip his dispensary with surgical instruments and drugs. That finding is not sufficient to make the loan a commercial loan. A doctor is a professional man. A loan taken by him for the purchase of surgical instruments or drugs to be administered to his patients would not be a commercial loan.

2. A desperate attempt was made by the Opposite Party to show that the Petitioner has really a very small practice as a medical man but his dispensary is really a shop. In that case it would certainly be a business relating to trade. For this purpose the Opposite Party has sworn an utterly worthless counter-affidavit. There is no evidence anywhere in the record to justify a finding that the Petitioner keeps a shop.

3. The result is that the Petitioner was entitled to relief. If interest is calculated at ten per cent. and allowance is made for the amount paid as interest before the suit and payments subsequently made in execution of the decree the costs by the Opposite Party in the suit, in the execution case, the reasonable costs of the present proceedings, it will be found that a sum of Rs. 575 is now due. The learned Judge felt little sympathy for the Petitioner. Now, I am bound to say that

in my opinion he was right in so doing. I see no reason therefore why there should be a large number of small instalments.

4. The Rule is made absolute, the order of the Lower Court is set aside, the application of the Petitioner for review be allowed and there will be a decree in favour of the Opposite Party for Rs. 575. This will be realised in the first instalment of Rs. 300 to be paid on the 1st of July next, the second instalment of Rs. 275 to be paid on the 1st of July, 1943. I make no order as to costs.