

(1935) 08 CAL CK 0009
In the Calcutta High Court

Harnath Rai Binj Raj and Others

APPELLANT

Vs

Sewi Prosad Singh and Others

RESPONDENT

Date of Decision : 29-08-1935

Acts Referred:

Citation : AIR 1936 Cal 230

Hon'ble Judges : Panckridge, J

Bench : Division Bench

Judgement

Panckridge, J.—This is a border line case. It is true that the case resembles two other cases in which I have recently revoked the leave granted under Clauses 12 of the Letters Patent in that the only part of the cause of action which had arisen within the jurisdiction is the assignment by the original holders of the negotiable instrument in favour of the plaintiffs. There is also this to be said on the side of the defendants, that the majority of the plaintiffs reside in the same place as the defendants, and so they will not be put to any inconvenience if the leave is revoked. If the suit had not reached the stage, which it has in fact reached, I should probably have considered that the circumstances justified me in revoking the leave. On the other hand I have no reason to suspect, as I suspected in one of the previous cases, that the assignment was deliberately made in Calcutta for the purpose of embarrassing the defendants in their defence to the suit. So far as I can recollect, in the other case with which I have recently dealt, there had been few, if any, preliminary steps taken in the litigation. In this case, on the other hand, not only has there been discovery but the suit has appeared in the Prospective List, and also in the Warning List, on several occasions. It appeared on the Warning List on 18th July 1935 and on 22nd August 1935, and on those occasions it was adjourned by consent, the adjournment on the last occasion being over the long vacation. It is said that the defendants consented to the adjournment to accommodate the plaintiffs and that it is therefore inequitable that they should be in a worse position because they have treated their opponents with courtesy. I think there is something in that argument, but at the same time, where the defendant feels aggrieved at the manner in which the

Court has exercised the discretion which it admittedly has, I think that he should apply at the earliest moment and not allow what is prima facie a perfectly bona fide suit to proceed through the normal stages of litigation up to the stage of being ready for hearing and appearing in the Warning List before he makes his application. In these circumstances I refuse the application with costs. Certified for counsel. The plaintiff will pay the costs of the guardian ad litem and add them to his claim.