

(1936) 06 CAL CK 0011
In the Calcutta High Court
Case No : Order No. 1123 of 1936

In the matter of Souresh Chandra Sarkar	APPELLANT
Vs	
Gosta Behari Dutt	RESPONDENT

Date of Decision : 30-06-1936

Acts Referred:

Citation : (1936) 06 CAL CK 0011

Judgement

1. This is an application for extension of time to pay the deficit court-fees in an appeal which is referred to in the said application. The amount of the court-fees payable on the Memorandum, of Appeal is Rs. 495, but the appeal was filed in time with a court-fee of Rs. 2 only. In the application it is stated that the Appellant lives in a district where an acute famine is prevailing and where the Mahals of the Petitioner on which he gets rent are situate and that the tenants are on the verge of extreme poverty; that he cannot earn even one meal a day; that he is selling his properties, both movable and immovable, to procure food; that, in the circumstances, the tenants have failed to pay up any rent to the Petitioner and that in consequence, his estate has been sold and that in order to set aside the sale he had to borrow some money. In the circumstances, we are asked to exercise our discretion under sec. 149 of the CPC in this case. In the case of Sm. Khatumannessa Bibi v. Durjodhone Roy Chowdhury 38 C.W.N. 650 (1934)--a decision to which I was a party --it was held that inability to raise funds is not a sufficient ground which would entitle the Court to exercise its discretion under sec. 149 of the CPC and to permit payment of the deficit court-fees. The view which we took was a view which was not shared by the Bombay High Court. In that particular case, the Bombay High Court took a contrary view. But as there was no decision of this Court on this point we allowed under the special circumstances of that case an extension of time. The rules which were laid down in that case had a reference to normal conditions prevailing and on normal conditions prevailing this Court held that inability to raise funds is not a sufficient ground which would entitle the Court to exercise its discretion under sec. 149. C. P. C.

2. Having regard to the grounds made in the petition which was sworn that the Petitioner lived in a district where an acute famine prevailed, we think we should exercise our discretion under sec. 149. This decision of ours will not interfere with the rule laid down in the decision of this Court just referred to, because in that case, unlike this case, normal conditions were prevailing. In the circumstances, we allow four weeks" time to pay the deficit court-fee of Rs. 493. If that sum is not paid by that time, the matter will be put up before the Court for final orders.