

(1914) 05 CAL CK 0049
In the Calcutta High Court

Jaydhari Dasya and Others

APPELLANT

Vs

Rasik Lal Sikdak and Others

RESPONDENT

Date of Decision : 22-05-1914

Acts Referred:

Citation : AIR 1914 Cal 854(1) : 24 Ind. Cas. 694

Hon'ble Judges : N. Chatterjee, J;D. Chatterjee, J

Bench : Division Bench

Judgement

1. This is an appeal against an order rejecting an application for the revival of an application for the setting aside of a sale in execution of a decree. The application was headed as one under Order XLVII, Rule 1. and Order IX, Rule 9, and seems to have been filed in the office of the Court below. The officer of the Court reported that this was an application under Order XLVII, Rule 1, and the copy of the judgment complained against was not filed. On that report the learned Subordinate Judge wrote, "No sufficient ground to admit the application : rejected." The officer of the Court had no right to decide whether the petition was one under Order XLVII or Order IX and his report must mean that as the petition was headed as one under Order XLVII it must as such be accompanied with a copy of the judgment. If the learned Judge thought that a copy of the judgment was necessary he should have either returned the petition or asked the petitioners to file the required copy. Not only did he not do so but he recorded an order rejecting the petition as he saw no sufficient reason to admit the same.

2. This order was apparently recorded without hearing the application. It is contended by the learned Vakil for the respondent that this was a judicial order rejecting an application for review, and there is no appeal against such an order and it is not amenable to revision u/s 115 of the Civil Procedure Code, as the case seems to have been treated as one under Order XLVII and the question of the applicability of Order IX was not considered. We shall deal with the matter before us only as one under Order XLVII. It is the essence of a judicial order upon an application that the applicant should have an opportunity of being heard

in support of his prayer : The applicant had no such opportunity and was not heard in this case. The order, therefore, was passed by a Court acting with material irregularity in the exercise of its jurisdiction. In this view of the case we set aside the order of the Court below and direct it to hear the application in accordance with law. No order as to costs.