
(1924) 08 CAL CK 0010
In the Calcutta High Court

Kandru Halдар

APPELLANT

Vs

Tarapasanna Roy Chowdhuri and Others

RESPONDENT

Date of Decision : 25-08-1924

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 16 Rule 1

Citation : 87 Ind. Cas. 355

Hon'ble Judges : Newbould, J; Ghose, J

Bench : Division Bench

Judgement

1. The petitioner in this Rule was the defendant in a suit for rent. After several adjournments the suit was fixed for hearing on the 29th June. On that date it was again adjourned on both parties' prayer to the 26th July, and an order was recorded, "issue process to the witnesses of defendant as prayed for." The record shows that this order was a mistake. The defendant never asked for process on his witnesses on that date. What he asked was for an adjournment in order to enable him to bring his witnesses who were ill. On the 8th July, however, the defendant did file a petition asking for issue of summons on his witnesses. That petition was rejected by the Munsif as untimely filed. On the 26th July the second prayer for issue of process by the defendant was again rejected, and on the defendant's Pleader stating that he had no other instruction the suit was heard and decreed ex parte. The appeal to the District Judge failed on the ground that the Munsif was specially empowered u/s 153 of the Bengal Tenancy Act. The learned Judge, however, treated the appeal as an application for revision under that section and dismissed it.

2. We think that the Munsif acted without jurisdiction when on the 8th July 1921 he rejected the petitioner's application for summons on his witnesses. The provisions of the Code as to the issue of summons are to be found in Order XVI, C. P.C. Nowhere in that order is the Court given discretion to refuse an application which may be made by a party under Rule 1 of that Order. It has been held that the circumstance that the application was made at a late stage is

no ground for refusing it though the Court may, when the case is heard, refuse to adjourn the hearing Kaji Ahmad v. Kaji Mahamad 9 B. 308 : 5 Ind. Dec. (N.S.) 205 and Abdool Kadir v. Shaikh Abin Mirdha 24 W.R. 290. The question whether a Court should issue a summons or should adjourn are two entirely, distinct matters. The Court has, except in cases of manifest abuse of procedure, no discretion to refuse an application for summons.

3. We hold, therefore, that this Rule must be made absolute, and as the order refusing summons was made without jurisdiction we must also set aside the order granting the ex parte decree. The Rule is accordingly made absolute and the ex parte decree set aside, and the suit will be re-heard according to law.

4. The petitioner will get his costs from the opposite party in this Rule. We assess the hearing fee at one gold mohur.