

(1896) 02 CAL CK 0011
In the Calcutta High Court

Madhub Lall Durgur

APPELLANT

Vs

Woopendranarain Sen

RESPONDENT

Date of Decision : 11-02-1896

Acts Referred:

Citation : (1896) ILR (Cal) 573

Hon'ble Judges : Sale, J

Bench : Single Bench

Judgement

Sale, J.—I must, I think, adhere to the opinion I have already expressed. In my opinion no ground has" been shown for a review of the order rescinding the leave granted to the defendant to appear and defend. As regards the question of limitation, I still think that the only possible date to which I can refer is the date of the service of summons as shown in the Sheriff's return. From the statement made in the petition, the proper inference is that service of the summons was effected on the 5th of January, and that the period of limitation in respect of the application to appear and defend began to run from that date. I do" not think that the situation is altered by the fact that on the plaintiff's application to rescind the order giving the defendant leave to appear and defend the defendant came prepared to show that there had been, in fact, on service of summons at all. The proper time to determine questions of limitation relative to ex parte applications is when the application is made, and-I do not think it is open to the defendant afterwards to attempt to escape the law of limitation by showing a state of things different from that appearing on the face of the original petition. The question as to what took place upon the occasion of the service of summons by the Sheriff is one which may properly be taken into consideration op an application u/s 534 to set aside the decree, if made but for the reason I have already stated, it is not, I think, a matter which I am at liberty to enquire into at the present state of the case. The rule must be discharged with costs.