

**(1918) 05 CAL CK 0015**  
**In the Calcutta High Court**

Maharaja Birendra Kishore Manikya Bahadur

APPELLANT

Vs

Hashmat Ali and Others

RESPONDENT

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**Date of Decision :** 07-05-1918

**Acts Referred:**

Civil Procedure Code, 1908 (CPC) — Section 86

**Citation :** 46 Ind. Cas. 558

**Hon'ble Judges :** Smither, J; Fletcher, J

**Bench :** Division Bench

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## Judgement

1. This is an appeal preferred by the defendant No. 1 against the decision of the learned District Judge of Noakhali, affirming the decision of the Munsif of Feni. The suit was brought to enforce specific performance of a contract to grant a lease. Two points have been raised before us in this appeal. The first is that the Court had no jurisdiction to try the case having regard to the provisions of Section 86 of the Code of Civil Procedure. The defendant No. 1 is a Ruling Chief and he has sovereign powers and no authority has been obtained from the Government of India to maintain the present suit against him. Both in the primary Court and in the lower Appellate Court that point was deliberately abandoned by the Maharaja's representatives and their view was that they required a decision of the Court without approaching the Government of India for a consent to maintain the suit. The course was obviously right because in a trivial suit of this nature the total value of which is Rs. 75, it would not be to any body's advantage that the case should be sent up to the Government of India for that purpose. However, in any case, the defendant No. 1 clearly submitted to the jurisdiction of the Court and it is much too late now to set up the objection that no authority has been obtained from the Government.

2. The other point is a point that has nothing in it. The defendant No. 1 says that specific performance ought not to be enforced against him on the ground of suppression of material facts and the material facts suppressed are these. Some years ago, the plaintiff in some transaction with the Maharaja became a defaulter

and, therefore, it is said that he ought to have told the Maharaja's representatives that he defaulted before he entered into the present contract to take the lease. There was no such obligation on the plaintiff to disclose to the Maharaja the fact that, on some former occasion, he made a default. That was the Maharaja's look out or rather that of his representatives and they ought to have found out like any other people whether the plaintiff was a suitable person to enter into a bargain with. There is nothing in this point.

3. The appeal fails and is dismissed with costs.