
(1922) 03 AHC CK 0023
In the Allahabad High Court

Musammat Tirbeni Kunwar and Others	Vs	APPELLANT
Mohan Lal and Others		RESPONDENT

Date of Decision : 02-03-1922

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 47 Rule 1

Citation : AIR 1922 All 366 : 66 Ind. Cas. 558

Hon'ble Judges : Walsh, J;Piggott, J

Bench : Division Bench

Judgement

1. This is an appeal against an order passed by the District Judge of Budaun, allowing an application for review of an appellate judgment in a case heard by him on the 18th of February 1920. The circumstances are somewhat peculiar. The suit was one for declaration and the plaintiff had lost in the Trial Court. On the day on which the appeal was down for hearing the plaintiff was in hospital, and on the day following he was operated upon, so that all his family were naturally in attendance upon him at the hospital. A week later he died, apparently without having left the hospital.

2. The applicant for review is the son of the original plaintiff-appellant. He name before the District Judge with a number of certified copies, apparently of public document?, which he said it had been intended to lay before the Appellate Court with a view to their admission in evidence under the provisions of Order XLI, Rule 27 of the Code of Civil Procedure. He ascribed the failure to do this to his father's serious and fatal illness and the circumstances attendant thereon which have already been stated. The learned District Judge has passed an order granting review of judgment.

3. One thing seems clear and should be understood by the parties concerned. The order so far passed is merely an order for the re-hearing of the appeal, as it was heard on the 18th of February 1920, with liberty to the plaintiff appellant to make any application, as for instance, an application under Order XLI, Rule 27, Civil procedure Code, which could have been made on that date and might have

been so made but for the serious illness of the then appellant. It is still left to the Court below to consider carefully whether a case is made out for the admission of fresh evidence under Order XLI, Rule 27 of the Civil Procedure Code, as well as the effect of the evidence thus tendered may have upon the decision, if it be accepted.

4. The appeal before us is subject to the provisions of Order XLVII, Rule 7 of the Civil Procedure Code. There is no question of limitation involved and there has been no contravention of Order XLVII, Rule 2. The contention before us is that there has been a contravention of Order XLVII, Rule 4, because the Court below has granted an application for review on the ground of discovery of new matter or evidence, without the strict proof of the necessary allegations which is required under the provisions of the said rule. It seems doubtful whether this review has really been granted on the ground of the discovery of new and important matter or evidence. Ordinarily, that expression would refer only to a discovery made since the order sought to be reviewed was passed. Under the somewhat peculiar circumstances of the present case, the applicant, while alleging the discovery of new and important evidence, does not say that he has discovered it since the passing of the order sought to be reviewed; on the contrary, it is his grievance that he was prevented by circumstances beyond his control from tendering this evidence to the Court at the time when the judgment sought to be reviewed was delivered against him. If the application be treated as falling within the purview of the words discovery of new and important evidence which after the exercise of due diligence could not be produced at the time when the decree was passed," it seems difficult to hold, in view of the discretion allowed to Courts in this matter, that the District Judge arrived at the conclusion that this new evidence could not be tendered at the previous hearing of the appeal without such proof as the law considers sufficient. If, on the other hand, the case does not really fall within the purview of these words at all, then the learned District Judge has granted this review "for other sufficient reasons", within the meaning of Order XLVII, Rule 1, and the appeal against it is not maintainable.

5. For these reasons we are content to dismiss this appeal, and we do so with costs.