
(1968) 07 CAL CK 0003
In the Calcutta High Court
Case No : Civil Revision No. 4059 of 1963

National Cement, Mines and Industries Ltd.	APPELLANT
Vs	
Sree Sree Baidyanath Jew	RESPONDENT

Date of Decision : 03-07-1968

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 151

Citation : (1969) 1 ILR (Cal) 118

Hon'ble Judges : P.N. Mookerjee, J;A.N. Chakrabarti, J

Bench : Division Bench

Advocate : Bhupendra Nath Mitra, for the Appellant;Chittatosh Mookerjee, for the Respondent

Judgement

P.N. Mookerjee, J.—This Rule was obtained by the Petitioner against an order of the Court of Appeal below refusing its application for extension of time for making a deposit which was a condition precedent to a remand order for hearing or rehearing, on remand, of the original misc. case.

2. The Petitioner's application for setting aside a sale was registered as Misc. Case No. 156 of 1962 of the Court of the Subordinate Judge at Asansole and eventually it was dismissed for default. Thereafter, on appeal, the same was directed by the learned District Judge to be restored to file, on setting aside the said order of dismissal for default, on condition that the Petitioner paid a sum of Rs. 32 to the opposite party within 15 days from the date of arrival of the records in the first Court. This order of the lower Appellate Court was passed on May 7, 1963. The records appear to have reached the first Court on May 15, 1963. The money in question, however, namely Rs. 32 which was sent by money order by the Petitioner on May 17, 1963, did not reach the Court before August 22, 1963. In the circumstances, the misc. appeal was held to have stood dismissed and, thereupon, the Petitioner made the present application for extension of time in the matter of the above deposit and for restoration of the appeal.

3. This application was made u/s 151 of the Code of Civil Procedure. The learned District Judge, being of the view that, having regard to the terms of the above default order, he had no power to extend the time, refused the Petitioner's application. Against this order, the present Rule was obtained by the Petitioner.

4. It is now settled by the authority of the Supreme Court in the case of Mahanth Ram Das Vs. Ganga Das, that, except in cases of conditional decrees, the Court's power to extend the time in case of such default orders, remains. The instant case is not a Case of a decree. Accordingly, the learned District Judge, in our opinion, had power to extend the time and, in the circumstances of this case, ought to have extended the same.

5. We, accordingly, make this Rule absolute, set aside the order of the learned District Judge and direct that the Petitioner's application u/s 151 of the Code be allowed and the money received by the Court as stated hereinbefore be accepted after necessary extension of time and the misc. case be restored to file in terms of the relevant order of the learned District Judge in the appeal and the same will now proceed in accordance with law on that footing.

6. As a long time has already elapsed, the learned Subordinate Judge is directed to expedite the hearing of the misc. case as much as possible.

7. There will be no order for costs in this Rule.

8. Let the records go down as quickly as possible.

A.N. Chakrabarti, J.

9. I agree.