

(1891) 04 CAL CK 0001
In the Calcutta High Court

Norendronath Bose

APPELLANT

Vs

Abinash Chunder Roy

RESPONDENT

Date of Decision : 16-04-1891

Acts Referred:

Presidency Small Cause Courts Act, 1882 — Section 38

Citation : (1891) ILR (Cal) 445

Hon'ble Judges : Wilson, J

Bench : Single Bench

Judgement

Wilson, J.—This is a petition u/s 38 of the Presidency Small Cause Courts Act. The Section (Clause i) is as follows: "Any party may, within eight days after the judgment in any suit in the Small Cause Court in which the amount or value of the subject-matter exceeds one thousand rupees, apply to the High Court for an order that such suit may be re-heard in the High Court." Section 71 of the Act says: "A fee not exceeding (the scale is given) shall be paid on the plaint in every suit and every application u/s thirty-eight or Section forty-one, and no such plaint or application shall be received until such fee had been paid."

2. According to the practice of this Court petitions are presented in chambers, or by counsel in open Court on days when motions are heard. In urgent cases, however, it is common to allow them to be presented on days other than motion days, and to hear counsel in support of them the next motion day.

3. In this case the eighth day from the Small Cause Court judgment was Tuesday last, and it was not a motion day. Mr. Chowdhry on that day asked leave to present the petition; this was allowed, and the next motion day, Thursday, Mr. Pugh rose to move in terms of the petition. It then appeared that the petition was not duly stamped, bearing only a 7-rupee stamp instead of the very much larger one required by Section 71.

4. Mr. Pugh then asked to be allowed to stamp the petition properly, and that it might then be treated as a good petition from the first. I think this cannot be

done. Eight days are by Section 38 allowed, within which an application can be heard; and by Section 71 the application is not to be received unless the proper stamp duty has been paid. This petition was presented on the last possible day; if considered then it could not have been received, but must have been rejected. The consideration was deferred to Thursday, but that can make no difference; eight days had expired before the petition was in such a condition that it could be received.