

**(1926) 01 CAL CK 0054**  
**In the Calcutta High Court**

Safitannessa Khatun and Others

APPELLANT

Vs

Megh Lal Gope and Others

RESPONDENT

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**Date of Decision :** 06-01-1926

**Acts Referred:**

**Citation :** AIR 1926 Cal 735 : 94 Ind. Cas. 172

**Hon'ble Judges :** George Claus Rankin, J

**Bench :** Single Bench

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## Judgement

George Claus Rankin, J.—In this case the auction-purchaser who had been in possession of the property purchased for a substantial period--it is alleged for some three years--found that the Court had made an order under Rule 90 of Order XXI setting aside the sale upon the application of a person who claimed to be a mortgagee and who claimed that at the time of the sale no notice had been served upon him. The auction-purchaser claimed that the mortgagee had got the sale set aside by suppressing the service of all notices of the application under Rule 90. When he came to learn of the order made setting this sale aside, he applied to the Munsif under Order IX as a person who had not been properly served and against whom an ex parte decree had been made in his absence. The Munsif dismissed that application on the ground that Order IX was inapplicable to execution proceedings and that position seems, so far as the Vakil for the petitioner is concerned, to be uncontested before me.

2. There has been a great difference of opinion on the matter but what is said on the part of the petitioner now is that the Court can give relief u/s 115 by making an order treating the application to restore under Order IX as though it. has been an application for review made under Order XLVII. If this Court makes an order that the one application should be deemed to be considered as the other, then it is said the applicant may have his rights determined. It appears to me that it is a very strong thing, when the Munsif has quite rightly decided that he has no jurisdiction to entertain the application that was in fact made, without any error on the part of the Munsif and without any illegality on his part, to make an order

u/s 115 directing that the application should be deemed to have been a different application. I do not make any comment upon the other cases in which that course has been thought correct, but having regard to the fact that in this case there was an appeal under Rule 92 granted by the Code, I do not see my way to make any such order as I am asked to make. It seems to me that the case of the present applicant may or may not be a very hard one, but that it would be making bad law and establishing a very doubtful practice, if I were to try to assist him by directing in my revisional jurisdiction that the application under Order IX should be treated as an application for review.

3. For these reasons, I think this application fails and the Rule must be discharged with costs, hearing-fee one gold mohur.

4. This order will govern Revision Cases Nos. 951 and 952 which are also discharged with costs, hearing-fee one gold mohur in each case.