
(1916) 05 CAL CK 0059
In the Calcutta High Court

Satikantha Banerjee

APPELLANT

Vs

Ram Chandra Chatterjee and Others

RESPONDENT

Date of Decision : 29-05-1916

Acts Referred:

Limitation Act, 1963 — Section 5

Citation : 34 Ind. Cas. 556

Hon'ble Judges : Lancelot Sanderson, C.J.; Asutosh Mookerjee, J

Bench : Division Bench

Judgement

Lancelot Sanderson, C.J.—I am of opinion that this Rule should be made absolute, and that the case should go to the Bench which would in the ordinary course have jurisdiction over the matter, so that that Bench may consider all the facts which are set out in the various affidavits. We have only had the opportunity of reading the facts set out in the affidavit of the 14th of April 1915, filed on behalf of the plaintiff. We now understand that there are other affidavits filed on behalf of the defendants, and the facts in the affidavit of the 14th of April are not accepted but are denied in material respects. Therefore, we think that this matter should go to the Bench as I have already intimated, so that that Court may consider all the facts which are material to the question, whether the time for entering the appeal should be extended. Supposing that that Court comes to the conclusion on the merits that the time for appealing should be extended, then no further question will arise. But supposing that that Court comes to the conclusion on the merits that the time should not be extended, then arises the question of law we have discussed this morning, as to whether the plaintiff is entitled as a matter of right to have his appeal filed. The plaintiff alleges that inasmuch as the decree was amended on the 27th of January 1915, the time for entering the appeal would not begin to run until that date, and that, therefore, inasmuch as the appeal was filed or attempted to be filed on the 21st of April it was within time. I think the proper rule to apply to such a condition of affairs is that laid down in the case of Brojo Lal Rai Chowdhury v. Tara Prasanna Bhattacharji 3 C.L.J. 188. The head-note expresses that part of the judgment to

which I wish to refer, and it is as follows : " Every amendment made in a decree u/s 206, Civil Procedure Code, does not necessarily entitle a party, who prefers an appeal against the decree, to claim an extension of time under the second paragraph of Section 5 of the Limitation Act; whether there is sufficient cause for such extension must depend upon the circumstances of each individual case. If the amendment has no relation to the grounds upon which the validity of the decree is sought to be challenged in appeal, such appeal should not be admitted out of time. On the other hand, if the grounds on which the appeal is based are intimately connected with the amendment of the decree, or if the grounds are directed against the decree only in so far as it has been amended, the Court should exercise in his favour the discretion vested in it by paragraph 2 of Section 5 of the Limitation Act." Applying this principle, what I mean to say is that if the Bench which is to hear this case does come to the conclusion on the merits of the case, as set out in the various affidavits to which I have referred, that there is no ground for extending the time for appealing, then the plaintiff ought to be limited to his grounds of appeal which refer to the amendments which were inserted in the decree on the 27th of January 1915, and to those amendments only.

2. This Rule is, therefore, made absolute with costs hearing fee, one gold mohur.

3. The Bench to which this is sent after hearing the material facts will either allow the whole appeal to be admitted or part of the appeal only as above mentioned.

Mookerjee, J.

4. I agree.