
(1921) 07 CAL CK 0051
In the Calcutta High Court

Satindra Nath Banerji

APPELLANT

Vs

Siva Prasad Bhakat and Others

RESPONDENT

Date of Decision : 11-07-1921

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 21 Rule 63
Court Fees Act, 1870 — Article 17(II)

Citation : 64 Ind. Cas. 713

Hon'ble Judges : Pearson, J;N.R. Chatterjea, J

Bench : Division Bench

Judgement

1. The question raised in this Bale is whether an ad valorem Court fee is parable upon the plaint in a suit by a person who had preferred a claim to properties attached in execution of a decree, which was rejected by the Court.

2. The petitioner, who was the plaintiff in the suit, paid a Court fee of Rs. 10 for a declaration of his title to the properties and annas 12 for an injunction.

3. It appears that when certain properties of the judgment debtor were attached in execution of a decree for money by the opposite party Nos. 1 to 8, the petitioner preferred a claim on the ground that the properties were purchased by him, and did not belong to the judgment debtor. The 26th February 1921 was fixed as the date for bearing the claim. On that day a petition was put in on behalf of the claimant for time to enable him to produce his kabala. The decree-holder opposite party was present with his witnesses. The Court was of opinion that the petition was not a bona fide one and rejected it, From another order on the same day, it appears that nobody appeared for the claimant, though repeatedly called. The order of the learned Subordinate Judge is as follows:--"The decree-holder opposite party is ready with Pleader and witnesses. The petition of claim is rejected with costs and Rs. 8 as Pleader's fee and the Claim Case No. 3 of 1920 be dismissed."

4. The first question is whether the order in the claim case was conclusive, subject to the result of a regular suit as provided in Order XXI, Rule 63, Civil

Procedure Code.

5. There are a large number of cases on the question whether one year's rule of limitation contained in Article 11 of the Limitation Act is applicable to a suit brought by a person whose claim has been rejected without investigation. That question does not arise in the present case, except in so far as it has a bearing upon the question whether an order rejecting a claim under such circumstances is conclusive subject to the result of a regular suit. The decisions on the point under the former Codes were numerous and they were not uniform. See the cases collected in *Kallar Singh v. Toril Mahton* I C.W.N. 24. See also *Rahim Bux v. Abdul Kader* 32 C. 537.

6. In the case of *Jugal Kishore Marwari v. Bejoy Krishna Mukherjee* 15 Ind. Cas. 683 : 16 C.W.N. 882 where a claim preferred under Order XXI, Rule 58, was dismissed for non-prosecution and the property was sold, *Mookerjee and Beachcroft. JJ.*, held that the only remedy of the claimant, after his claim was dismissed under Order XXI, Rule 63, though for default, was by a suit. The learned Judges observed: "No doubt, in relation to the question of limitation applicable to a suit of the description mentioned in Rule 63, it has been held that Article 11 of the Second Schedule of the Limitation Act does not apply if the application has been refused without an investigation on the merits, *Kallar Singh v. Toril Mahton* I C.W.N. 24. Upon this point, however, there is a divergence of judicial opinion and there is weighty authority in support of the view that where an application has been dismissed, with or without investigation, a regular suit, if instituted, must be commenced within one year from the date of such order. *Gooroo Doss Roy v. Sona Moni Dossia* 20 W.R. 345, *Sreemanto Hajrah V. Syud Tajooddeen* 21 W.R. 409, *Tripooora Soonduree Delia v. Ijjutoonnissa Khatoon* 24 W.R. 411, *Sadut Ali V. Ram Dhone* 12 C.L.R. 43. But it is not necessary for our present purpose to express any opinion upon this question. It is sufficient to bold that, on the face of Rule 63, the order of refusal is plainly final till a regular suit has been instituted and successfully prosecuted."

7. In the case of *Nogendra Lal Chowdhury v. Fani Bhusan Das* 44 Ind. Cas. 265 : 45 C.785 : 23 C.W.N. 375 where the claim was rejected for default, the learned Judges, referring to the change in the wording of Order XXI, Rule 63, as compared with that of Section 283 of the Code of 1882, and the corresponding change in Article 11 of the present Limitation Act. observed that the decisions under Article 11 of the Limitation Act of 1877 are no longer of authority. They held that all that is now necessary is that a claim should be preferred under Rule 58 and that there should be an order either allowing or rejecting it. The party against whom the order is made may then bring a suit, in the language of Rule 63, "to establish the right which he claims to the property in dispute," or in the language of Article 11 of Schedule I of the Limitation Act, 1908, to "establish the right which he claims to the property comprised in the order," and the suit must be brought within the year allowed by Article 11 irrespective of whether any investigation took place or not.

8. It is clear, therefore, that an order dismissing a claim for default in an order within the meaning of Order XXI, Rule 63, and subject to the result of a regular suit, is conclusive.

9. In the case of *Bibi Phul Kumari v Ghanishyam Misra* 7 C.L.J. 36 : 35 C. 202 (P.C.) : 12 C.W.N. 169 : 10 Bom. L.R. 1 : 5 A.L.J. 10 : 17 M.L.J. 618 : 2 M.L.T. 506 : 14 Bur. L.R. 41 : 85 I.A. 22 (P.C.) where a claim having been rejected, a suit was brought for declaration of the plaintiff's right to the property and for an injunction restraining the defendant from executing his decree against the property claimed, it was held by the Judicial Committee, reversing the decision of the Courts below, that the suit was one u/s 283, Civil Procedure Code, for which the proper Court fee was that prescribed by Sub-section (1) of Article 17, Schedule 11 of the Court Fees Act, namely, Rs. 10 for a "suit to alter or set aside a summary decision or order of a Civil Court not established by Letters Patent." It does not appear that there was a dismissal for default in that case; but as pointed out in the case of *Nogendra Lal Chowdhury v. Fani Bhutan Das* 44 Ind. Cas. 265 : 45 C.785 : 23 C.W.N. 375, under the present Code any order rejecting a claim, whether upon investigation or for default, would come under the purview of Order XXI, Rule 63 And if that is so, the observations of the Judicial Committee referred to above would apply to either case.

10. There is no definition of "summary decision or order" in the Court Fees Act; but in the case of *Dayachand Nemchand v. Hemchand Dharanchand* 4 B. 515 (F.B.) : 2 Ind. Dec. (N.S.) 852 Sir M.R. Westropp, C.J., in delivering the opinion of the majority of the Full Bench said: "In the absence of any definition, in the Court Fees Act, of the term "summary decision or order" we should rather be disposed to regard it as "a decision or order not made in a regular suit or appeal."" And further on he observed: "Without positively binding ourselves to the proposition, that every decision or order not made in a regular suit or appeal is a summary decision or order, we are clearly of opinion that decisions, as to the removal or retention of attachment's, pronounced u/s 246 of Act VIII of 1859, are summary decisions or orders."

11. No doubt the facts of that case are different from those of the present, as there was a decision in the claim case. We have referred to that case only for the meaning of the words "summary decision or order." If, as pointed out in that date, the words summary decision or order" mean a decision or order not made in regular suit or appeal, then the present case would fall within the words "summary order" made by the Court.

12. It is unnecessary, however, to rely upon the observations in that case. Having regard to the decision of the Judicial Committee in *Bibi Phul Kumari v. Ghansyam Misra* 7 C.L.J. 36 : 35 C. 202 (P.C.) : 12 C.W.N. 169 : 10 Bom. L.R. 1 : 5 A.L.J. 10 : 17 M.L.J. 618 : 2 M.L.T. 506 : 14 Bur. L.R. 41 : 85 I.A. 22 (P.C.) as to the Article of the Court Fees Act applicable to suits u/s 283 of the Civil Procedure Code, and to the decision in *Nogendra Lal Chowdhury v. Fani Bhusan Das* 44 Ind. Cas. 265 : 45 C.785 : 23 C.W.N. 375 that the provisions of Order

XXI, Rule 63, are applicable to all orders passed upon claims preferred under Rule 58, whether upon investigation or for default, we think that the case falls under Article 17, Schedule II of the Court Fees Act, and that the proper Court fee payable is Rs. 10,

13. We ought to point out, however, that the plaint in the present case is open to the same observations which were made by the Judicial Committee in the case of *Bibi Phul Kumari v. Ghansyam Misra* 7 C.L.J. 36 : 35 C. 202 (P.C.) : 12 C.W.N. 169 : 10 Bom. L.R. 1 : 5 A.L.J. 10 : 17 M.L.J. 618 : 2 M.L.T. 506 : 14 Bur. L.R. 41 : 85 I.A. 22 (P.C.). But for the reasons given by their Lordships in that case, we think the suit may be treated as substantially one under Order XXI, Rule 63, and, therefore, falls under Article 17, Schedule II of the Court Fees Act.

14. The Rule is made absolute and the order of the Court below is set aside.

15. No order as to costs.