

(1929) 06 CAL CK 0036
In the Calcutta High Court

Satyakripal Banerji

APPELLANT

Vs

Satyabikash Banerji

RESPONDENT

Date of Decision : 25-06-1929

Acts Referred:

Citation : AIR 1930 Cal 631 : 129 Ind. Cas. 191

Hon'ble Judges : S.K. Ghose, J;Bose, J

Bench : Full Bench

Judgement

S.K. Ghose, J.—This rule arises out of the following circumstances: As far back as 1907, Title Suit No. 41 of 1907 was instituted in the First Court of the Subordinate Judge at Alipur, the reliefs claimed being partition and accounts and the value of the suit being Rs. 5 lakhs odd. The present petitioner was defendant 1 in that suit. The suit was preliminarily decreed by the learned Subordinate Judge on 24th July 1908 and by the High Court in appeal on 17th August 1909. Thereafter two commissioners were appointed in succession to take accounts, One of the claims of the plaintiff was with regard to Government promissory notes of the face value of Rs. 20,000. The defence was that certain notes had been sold by the plaintiff. The matter was duly investigated and the suit was finally decreed on 3rd April 1928, 21 years after its commencement. The defendants were held liable for Rs. 19,500 in respect of the aforesaid G.P. notes. The final decree was for Rs. 95,000. The petitioner's case is that since then he has discovered new evidence which was not within his knowledge before. Thereupon he filed an application for a review of judgment before the Subordinate Judge under Order 41, Rule 1, and Section 151 of the Code with regard to the petitioner's share of the said liability for Rs. 19,500, valuing the petition at Rs. 10,000 and paying court-fees of the value of Rs. 750 thereon. There was a preliminary objection to this application. The learned Subordinate Judge, after hearing the parties, held that the court-fees on the petition were leviable on the value of the entire claim in suit, and not on the value of the relief sought for in the review proceedings, and he directed the petitioner to pay the full court-fees as on the original plaint within a certain time. The petitioner at

first sought for extension of time. But ultimately he was unable to pay and his application for review was rejected. Hence this present application in revision.

2. It is now contended that the learned Subordinate Judge was in error in construing Article 4, Schedule 1, Court-fees Act, Act 7 of 1870. The whole thin turns upon the meaning of the words "the plaint" in column 3. To my mind they can mean nothing else than the plaint which was actually filed and which has resulted in the judgment which is sought to be reviewed. They do not mean an imaginary plaint which might, be filed at the time of the application for review and asking for the same relief as in that application. Similarly, in the case of a memorandum of appeal a reference to : Article 1 would not support any other construction. I am confirmed in this view by the reported decisions of the Calcutta and Allahabad High Courts : Nobin Chundra Chuakerbutty v. Mohamed Uzir Alt Sarkar 3 C.W.N. 292, Nandi Ram alias Nandi Lal Agrani Vs. Jogendra Chandra Dutta and Others, and In the matter of Sheikh Maqbul Ahmad [1909] 31 All. 294, though the other view has been taken in Madras and Bombay, Anon in Reference from. Civil Judge of Tanjore [1872] 7 M.H.C.R. App. 1 In re Punya; Nahako AIR 1927 Mad. 360, and In re Manohar G. Tambekar [1879] 4 Bom. 26. In In re Punya Nahako AIR 1927 Mad. 360, which is the last case on the point. The Calcutta view was dissented from on the ground that it would entail hardship in cases where, as here, the review application related to only a small portion of the relief asked for in the plaint. But this point was not overlooked in the decisions of that Calcutta and the Allahabad High Courts. As pointed out in In the matter of Sheikh Maqbul Ahmad [1909] 31 All. 294 the hardship is almost entirely mitigated in deserving cases by the provisions in Section 15 of the Act. The policy of the legislature is also referred to in the case of Nandi Ram alias Nandi Lal Agrani Vs. Jogendra Chandra Dutta and Others, . It was pointed out that

for the purpose of ascertainment of the court-fee payable on the application for review the application relates back to the plaint or memorandum of appeal as the case may be : the amount is levied in a fixed proportion, independent of the scope of the application for review.

3. It seems to me that the policy of the legislature was to put a clog on possible mala fide applications for review. I hold therefore that the order complained against was correctly passed and the present application must fail.

4. The rule is discharged with costs to all the contesting opposite parties. Hearing fee three gold mohurs.

Bose, J.

5. I agree.