

(1927) 01 CAL CK 0040
In the Calcutta High Court

Sefatullah Bepari

APPELLANT

Vs

Sadhu Molla

RESPONDENT

Date of Decision : 07-01-1927

Acts Referred:

Citation : AIR 1927 Cal 495

Hon'ble Judges : Mitter, J

Bench : Division Bench

Judgement

Mitter, J.—This rule was issued on the Opposite Party to show cause why the decree passed by the Munsif, 1st Court, Serajgunge, dated the 18th August 1926, should not be vacated and a decree passed in favour of the plaintiff for Rs. 84 odd found to be due to the plaintiff, The facts are that plaintiff and defendant and some other persons carried on business in partnership and the partnership was dissolved at the end of the Bengali year 1329. There was an adjustment of account in 1327 B.S. and a sum of Rs. 78-11-3 pies was found due from the defendant. This amount was carried over to the account of 1329 together with two other sums taken by the defendant and the adjustment of account in 1329 showed that the defendant owed Rs. 89 to the plaintiff. Rs. 5 was paid to the plaintiff and the plaintiff seeks to recover Rs. 84 in this suit. The defendant's plea is that the plaintiff's claim for Rs. 78 is barred by limitation as the suit was not commenced within three years of 1327 and this plea has been given effect to and the Small Cause Court Judge dismissed the plaintiff's suit in regard to the same. The present rule has been obtained by the plaintiff and it has been argued that the Small Cause Court Judge has committed an error of law in holding that the suit is barred by limitation. It is argued that although the adjustment of accounts was not signed by the defendant there was an implied promise to pay on the date of the adjustment and this gave rise to a fresh cause of action in 1329. It is not a case of account stated and consequently Art, 64 of the 1st Schedule to the Limitation Act does not apply, nor is it a suit on running mutual account as the entries are all on one side and consequently Art, 85 does not apply. The adjustment of account is not signed by the defendant but it arises out

of partnership relations.

2. The finding of the Small Cause Court Judge is that the amount of Rs. 78-11-3 pies was carried over to the account of 1329 and together with two other items therein noted, the debt swelled to Rs. 89 which was forwarded to next year's account. It appears to me that the plaintiff has established that the suit is one on an adjusted account which entitles him to claim that sum by virtue of that adjustment, A new cause of action arose at the end of 1329 B.S. and the suit being within three years is not barred whether Article 115 or Article 120 applied to the case.

3. I am supported in this view by a decision of Sir Lawrence Jenkins, C.J., in the case of Jalim Singh v. Choonee Lal 15 C.W.N. 882. The result is that the decree of the Small Cause Court Judge is set aside and a decree for Rs. 84 be passed against the defendant with costs and interest at 6 per cent per annum. I assess the hearing-fee at one gold mohur. I may mention that the opposite party has not appeared to show cause in this rule.