

(1899) 06 CAL CK 0002
In the Calcutta High Court
Case No : Suit No. 280 of 1899

Shama Sundary Dassee

APPELLANT

Vs

Rash Behary Dhur

RESPONDENT

Date of Decision : 12-06-1899

Acts Referred:

Citation : (1899) 06 CAL CK 0002

Judgement

Sale, J.—The Defendant applies for an order on the Plaintiff to give security for the costs of this suit. The application is made under sec. 380, C.P.C. It is said that the Plaintiff being a female and possessing no immoveable property the order should be made. It has been the practice of this Court, in regard to the power of the Court under sec. 380, to hold that the exercise of this power is in the discretion of the Court. Speaking for myself I should hesitate to exercise this power. The suit is on two promissory notes. The Defendant admits the notes, but sets up that he was drunk and that the notes were executed in the house of the Plaintiff, a woman of the town whom he was visiting. That is a sort of defence which the Court ought not to favour. If the plaint had been filed within six months from the date of the promissory notes under Chap. 39, the Defendant would have been called upon to give security before he could defend the suit. I think the Plaintiff has explained not having brought the suit within six months, as Plaintiff was living with the Defendant at the time and she probably thought she would have recovered her influence over the Defendant and that the suit would be unnecessary. I cannot make an order unless grounds are shown tending to show that the defence is true. The circumstances mentioned by Mr. Garth are not such as to justify me in calling on the Plaintiff to give security. Having regard to the probability that if I make the order, the Plaintiff may not be able to proceed with the suit, this is a case in which I ought not to make the order. I must refuse the application with costs.