

(1905) 03 CAL CK 0004

In the Calcutta High Court

Case No : Appeal From Original Decree No. 345 of 1904

The Port Canning and Land Improvement Co., LD.

APPELLANT

Vs

Dharanidhar Sardar

RESPONDENT

Date of Decision : 14-03-1905

Acts Referred:

Citation : (1905) 03 CAL CK 0004

Judgement

Maclean, C.J.—This appeal must be allowed. The learned Judge of the Court below seems to have taken a very technical view of the matter, and put a very narrow construction upon the terms of sec. 435, C.P.C.. The suit was by a Limited Company, and the plaint was verified by a gentleman of the name of Hoskins, who is described in the plaint as being the principal agent in Bengal on behalf of the Plaintiff Company, and competent to prove everything in connection with the present suit. He has verified the plaint in these terms : --"The particulars set forth in this plaint and in the account are true to my information and belief." It is said that this is not a sufficient verification within the meaning of sec. 435 of the Code, the language of which is that the verification may be made by--I am only referring to the words which are material for our present purposes -- "any other principal officer of the Corporation or Company who is able to depose to the facts of the case." It is said that Mr. Hoskins cannot depose to the facts of the case because he only speaks from information and belief. But the section says nothing about actual personal knowledge on the part of the verifier as the Code does in sec. 52. That section shows that a verifier may depose upon his information and belief, and there is nothing in sec. 435 to say that he can only depose from his own personal knowledge. The verification is sufficient. But even if this view is not correct, I think leave ought to have been granted to the Plaintiff to amend the plaint, and the suit ought not to have been dismissed. The appeal must be allowed, and the case must be tried out. The Appellants will be entitled to their costs of this appeal, which we assess at Rs. 250: these may be added to their mortgage security. The Appellants will be entitled to a refund of the Court-fee paid by them on the memorandum of appeal.

2. This judgment, it is admitted, will apply to the other appeal No. 351. We assess the hearing-fee in this case at Rs. 150. The Appellants will be entitled to a refund of the Court-fee paid by them on the memorandum of appeal.