

**Badrinarain Vs. Chandanmal**

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**SooperKanoon Citation :** [sooperkanoon.com/750435](http://sooperkanoon.com/750435)

**Court :** Rajasthan

**Decided On :** Sep-09-1949

**Reported in :** AIR1950Raj2

**Judge :** Nawal Kishore, J.

**Acts :** Court Fees Act, 1872 - Sections 13; [Code of Civil Procedure \(CPC\) , 1908](#) - Order 41, Rule 23; Limitation Act, 1908 - Sections 5

**Appeal No. :** Civil Appeal Nos. 10 and 12 of 1948-49

**Appellant :** Badrinarain

**Respondent :** Chandanmal

**Advocate for Def. :** Hastimal, Adv.

**Advocate for Pet/Ap. :** Sohan Lal, Adv.

**Disposition :** Appeal dismissed

**Judgement :**

**Nawal Kishore, J.**

1. This judgment will dispose of two appeals Nos. 10, 12/1948.49 as they have arisen out of the same case. The facts relating to them are stated in detail in a single bench judgment of this Court dated 14th September 1946 in Civil Appeal

case no. 160/1942-43 and therefore only such facts will be set out in this judgment as are directly relevant to the points agitated by the learned counsel in this Court.

2. This litigation between the parties arose out of a dispute relating to certain salt business done by them in partnership. It is common ground that at Pachpadra salt business was carried on by the Government of Jodhpur and the British Government separately and this consisted of transporting salt from the salt pits to the Pachpadra railway station. The work of transporting the salt in connection with the business carried on by the British Government was done by Messrs. Badrinarain Chandan Mal, whereas Messrs. Gangabux Gulabrai were agents of the Government of Jodhpur. It appears that Badrinarain entered into a partnership with Asaram. The partnership however was to be carried on in the name and style of Badrinarain Chandanmal with equal shares. Messrs Gangabux Gulabrai, who as mentioned above, were contractors of the Jodhpur Government, appointed the partnership as their agents, while Asaram entrusted the entire work to Ramchand and Dalichand. Thus the partnership came to be put in charge of the entire business that is, the business carried on both by the British Government and the Government of Jodhpur. The firm did the business of transporting a certain amount of salt during the period of the partnership and at the rate fixed certain income resulted, Badrinarain served a notice upon Asaram calling upon him to render account of the entire business, but since he failed to do so a suit for rendition of account was instituted. In this suit Asaram was of course a necessary party, but Gangabux Gulabrai and Ramchand and Dalichand were also impleaded; why, the learned counsel for the plaintiff appellant is not able to explain. In fact he concedes that they were not necessary parties to this litigation. This is not the only lapse which has occurred in this case, It appears to me that the plaint is also very unhappily worded as while it appears to show that the plaintiff is calling for a rendition of accounts relating to the business of salt done by the Government of Jodhpur only a perusal of the last paragraph shows that the plaintiff was asking for an account of the entire business done by the partnership. The details in the plaint relate mostly to the business of salt done by the Government of Jodhpur, but a reading of the entire plaint leaves no doubt whatsoever that it covered both the businesses done by the partnership. It is this unhappy phraseology of the plaint which has suggested a contention to the mind of the learned counsel for the

defendant at a very late stage of this litigation and that is that since the plaint was confined to a rendition of account relating to the business done by the Government of Jodhpur only and the partnership had maintained a common account for both the businesses and the account relating to the aforesaid business could not be separated, the suit was liable to be dismissed. This has been mentioned at this stage only to point out the unhappy wording of the plaint and the contention of the learned counsel will be dealt with in detail later on. For the purpose of the disposal of this appeal it is not necessary to recite the pleadings in detail and it will be sufficient to state that after the suit had been dismissed by the lower appellate Court, there was a second appeal to this court and the contention raised by the defendant Asaram was stoutly put for ward and that was that as a matter of fact, no deed of partnership had been executed between the parties. The learned Judge in chambers however, discussed that matter in detail with reference to the evidence produced on the record and came to the conclusion that a deed had as a matter of fact been executed. He also found that Ramchand and Dalichand had been appointed by Asaram as his agents to carry on the partnership business on his behalf. Since it was conceded that the accounts of the partnership were not properly gone into by the clerk who had been appointed as a commissioner the case was remanded to the trial Court with a direction to appoint another commissioner for the purpose of going into the accounts already produced by the parties and dispose of the case afresh after considering the commissioner's report and the objection by the parties if any. The trial Court complied with this order and the Commissioner duly submitted a report holding that the sum of Rs. 990/15 was due to the plaintiff from the defendant. Plaintiff did not object to this report but the defendant did and after hearing the objection in detail, the trial Court passed a decree for as. 410/7/6. Both parties preferred appeals in the Court of the learned Sub-Judge Balotra. The plaintiff's appeal was, however, dismissed as barred by time on the ground that the deficiency in court-fees stamp had been made up long after the expiry of the period of limitation. The defendant's appeal was also dismissed but on the merits. Both the appeals will be dealt with in this judgment separately.

3. So far as the plaintiff's appeal is concerned, the only question calling for a determination is whether the lower appellate Court was justified in refusing to

condone the delay that had occurred in making up the deficiency in the court-fees stamp. The appeal was filed on 16th December 1947 with no court-fees stamp at all and a note was added to the effect that the court-fees already paid on the memorandum of the last appeal may be considered to be court-fees for this appeal as well. The learned counsel probably had very vaguely the provisions of Section 13, Court-fees Act in his mind when he appended this note. But there seems no doubt whatsoever that while doing so, he did not carefully peruse the provisions of this section. According to that section, when a case is remanded under Order 41, Rule 23 the appellant is entitled to a certificate for refund of the court-fees. It does not at all mean that it is also open to the appellant to short circuit the entire procedure as it were and without asking for a certificate and a refund, request the Court to allow him to use the court-fees stamp already affixed on the previous appeal over again in respect of the appeal subsequently filed by him. Another serious question which should have been considered by him was whether it was at all a remand under Order 41, Rule 53. But it is no use discussing this matter any further as it is conceded by the learned counsel for the appellant that the counsel who filed the appeal bungled the whole affair. It is still urged that since wrong advice had been given to the appellant by his counsel, the latter was entitled to a condonation of the delay that had occurred in making up the court-fees stamp. In order that time may be extended under Section 6, Limitation Act, the appellant must satisfy the Court why delay had occurred. A bona fide mistake of fact or of law will indeed be a sufficient cause within the meaning of this section but it must have been committed bona fide, that is in spite of due care and attention. This means that every wrong advice given by the counsel will not amount to a sufficient cause entitling the appellant to claim indulgence under Section 5, Limitation Act. It will amount to a sufficient cause, to repeat, when the advice was given bona fide but if it was due to the negligence or gross want of legal skill on the part of the counsel the mistake cannot be held to be a bona fide mistake. *Jodhan Pershad Singh v. Nakku Pershad Singh*, 46 I. C. 509 : (A. I. R. (5) 1918 Pat. 336) was a similar case where also the appeal was held as barred by time because it had been filed on a deficient court fees stamp. The case was such as held in this authority, that it must have been obvious to anyone with ordinary legal knowledge that court-fees should be paid ad valorem but the counsel had paid a fixed fee of

Rs. 10 only. It was held that the filing of the appeal with a court fees stamp of Rs. 10 was not in good faith and the delay could not be excused. The learned counsel for the appellant has cited *Jowala Singh v. Mt. Dhano*, A. I. R. (19) 1932 Lab 21 : (133 I. C. 122) but that was a wholly different case and is not applicable to the facts of the present case. There the deficiency in the court-fees on the memorandum of appeal had been allowed to be made up by the appellate Court and the stamp had been duly accepted. Accordingly, it was held that no further question of limitation arose. It was held that the proper course for the appellate Court was always to make up its mind first as to whether there is any good ground for allowing the deficiency to be made up and that it was unfair to permit the deficiency to be made up and then hold that the appeal was barred by limitation. The learned counsel for the appellant urged that in this case also the court-fees stamp had been duly accepted but this is not at all correct. The court-fees stamp was presented in Court on 17th February 1949 but the Court did not pass any order accepting it and merely directed that it should be put up with the file. This is, on its face, a wholly different matter. In view of the above a ground for condonation of the delay has not been made out and the learned Sub-Judge was perfectly justified in holding the appeal as barred by time. The appeal accordingly fails and is hereby dismissed. The rest of the judgment is not material for purposes of reporting.