

Harit Krishna Deb Vs. Anil Krishna Deb

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Court : Kolkata

Decided On : Jan-12-1949

Reported in : AIR1951Cal469

Judge : G.N. Das, J.

Acts : [Code of Civil Procedure \(CPC\) , 1908](#) - Order 47, Rules 1 and 2

Appeal No. : Civil Rule No. 912 (M) of 1948

Appellant : Harit Krishna Deb

Respondent : Anil Krishna Deb

Advocate for Def. : Carden Noad, ;Jahnabi Charan Das Gupta and ;Pashupati Ghosh, Advs.

Advocate for Pet/Ap. : Atul Chandra Gupta, ;Apurba Charan Mukherji and ;Ganga Narayan Chandra, Advs.

Judgement :

ORDER

G.N. Das, J.

1 This Rule was issued by my learned brother Mukherjea J. and myself for a review of the order passed by us on 5-3-1948, in appeal from Original Order No.

49 of 1946, The relevant facts are stated in our order and need not be restated.

2. The question which arose for our decision in that appeal was one of limitation. We agreed with the trial Court in holding that the application for execution was barred by limitation. The main ground both in the trial Court and before us was thus stated in our order :

'Both in the Court below and in this Court, it has been argued that under Article 182 (5), Limitation Act, time would run from 2-12-1943, when the final order was passed in the execution case.'

This contention was repelled by us in the order sought to be reviewed.

3. The judgment of this Court was delivered by me, and my learned brother Mukherjea J. concurred. As Mukherjea J. has ceased to be a Judge of this Court, the Rule has come up for hearing before me.

4. Mr. Gupta who has appeared in support of the Rule has not reargued the point pressed before us at the original hearing. He has contended that the attention of this Court was not drawn to the last sentence of the order, dated 20-8-1942, passed by Nasim Ali and Blank JJ. in appeal from Original Order No. 307 of 1949 at a previous stage of the execution proceeding. The sentence runs as follows :

'The cost of this appeal will abide the ultimate result, the hearing fee in this appeal being assessed at three gold mohurs.'

5. It is submitted that this order implied the passing of a further order, at any rate, in the matter of costs of the appeal to this Court, to be passed in the execution case; that this necessarily implies that the execution case, at any rate, for the purpose of passing an order for costs, was revived, and that a final order in the execution case remained to be passed ; such an order would be later in date than the order of this Court; the order of this Court was passed on 20-8-1942, the present execution case which was filed on 18-8-1945 within three years of that date is, therefore, not barred by limitation.

6. It cannot be disputed that this argument has an important bearing on the question of limitation and requires serious consideration. Mr. Noad appearing on behalf of the opposite party contends that the ground suggested is not a good ground for review within Order 47, Rule 1, Civil P. C. In support of his contention, he has referred me to the decision of the Full Board of the Judicial Committee of the P. C. in Chhajju Ram v. Neki, 49 I. A. 144 : (A. I. R. (9) 1922 P. C. 112). The relevant passages of the judgment of the Board which was delivered by Viscount Haldane may now be stated. At p. 152, it is observed :

'They think that Rule 1 of Order 47 must be read as in itself definitive of the limits within which review is to-day permitted, and that reference to practice under former and different enactments is misleading. So construing it they interpret the words 'any other sufficient reason' as meaning a reason sufficient on grounds at least analogous fro those specified immediately previously.'

The rule itself was construed as follows :

'The three cases in which alone mere review is permitted are those of new material overlooked by excusable misfortune, mistake or error apparent on the lace of the record, or 'any other sufficient reason'.'

7. The view taken by the Judicial Committee in Chhajju Ram's case, (49 I. A. 144 : A. I. R. (9) 1922 P. C. 112) has been the subject of comment in Indian Courts. In Gopika Raman v. Mahar Ali, : AIR1924 Cal872 Mookerjee J. observed that the rule will lead to very refined, if not, subtle arguments, in the case of Narain Das v. Chiranji Lal, : AIR1925 All364 the learned Chief Justice characterised the argument based on the strict interpretation of the words 'sufficient reason' as a technical one. The rule itself as now explained by the Judicial Committee in Chhajju Ram's case, (49 I. A. 144 : A. I. R. (9) 1922 P. C. 112) has not been scrupulously followed in various cases by the Courts in this country. The decision in the case of Murari Rao v. Balavanth Dikshit, 46 Mad. 955 : (A. I. R. (11) 1924 Mad. 98) shows that the application for review was entertained on the ground that the original decision proceeded on an erroneous view of an well established proposition of law. In the case of Brindaban Chandra v. Damodar Prosad, : AIR1925 Cal304 this Court allowed an application for review on the ground that

this Court misconstrued the effect of the decision of the Judicial Committee in Sahu Ram's case, (A. I. R. (4) 1917 P. C. 61). In Probhas Kumar v. Nithar Lal, : AIR1924 Cal1054 this Court observed that the powers of review under Order 47, Rule 1 and Section 151, Civil P. C. are not mutually exclusive. In the cases of Rameshwar Mahton v. Dwarka Prosad, 3 Pat. 778 : (A.I.R. (12) 1925 Pat. 36), and K. K. S. A. L. Firm v. Maung Kya Nyun, 5 Rang. 675 : (A. I. R. (15) 1928 Rang. 31), the Courts reviewed previous decisions on the ground that the matter came within Section 151 or Order 47, Rule 1, Civil P. C.

8. In spite of these attempts on the part of the different Courts in this country, the rule as explained in Chhajju Ram's case, (49 I. A. 144 : A. I. R. (9) 1922 P. C. 112) must be applied in cases strictly covered by that decision. In Chhajju Ram's case, (49 I. A. 144 : A. I. R. (9) 1922 P. C. 112), review was granted on the ground that the former D. B. of the Court had proceeded on erroneous exposition of the law, such a ground obviously does not come within Order 47, Rule 1, Civil P. C.

9. In the present case, the application for review is founded on the ground that a new matter which is relevant for the purpose of decision was not placed before the Court. The attention of the Court was not drawn to this new material. The Court itself as also the learned advocates overlooked the last sentence in the order of this Court already referred to. In these circumstances, the question arises whether the present case can be regarded as 'excusable failure to bring to the notice of the Court the relevant material,' The words 'sufficient reason' have been construed to mean reason sufficient on grounds, at least analogous to those specified previously. It is loosely said that this means that the sufficient reason must be ejusdem generis to the reasons previously stated. The word 'analogous reason' however is wider and means a reason having some resemblance to or 'similar' in certain circumstances to the reasons previously stated. The failure on the part of the learned advocates to bring to the notice of the Court the fact on which reliance is now placed may in the circumstances of the present case be regarded as excusable misfortune in overlooking new material as stated by the Judicial Committee in Chhajju Barn's case, (49 I. A. 144 : A. I. R. (9) 1922 P. C. 112). I hold, therefore, that the facts of the present case are covered by the terms of Order 47, Rule 1, Civil P. C., and that the application for review should succeed. In

this view, this Rule is made absolute. The order passed by this Court on 5-3-1948, in appeal from Original order No. 49 of 1946 is vacated and the appeal restored to file and it will be now heard on merits. In the circumstances, the parties will bear their own costs in this Rule.

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