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Court : Kolkata

Decided On : Dec-18-1911

Reported in : 14Ind.Cas.627

Judge : Lawrence Jenkins, C.J. and ;N. Chatterjea, J.

Appellant : Ramjas Agarwalla

Respondent : India General Navigation and Ry. Co. Ld.

Judgement :

Lawrence Jenkins, C.J.

1. In our opinion the Rule in this case should be made absolute on the short ground that the lower Appellate Court decided the suit on a question of fact which was never in issue between the parties in the Court of first instance, through a misapprehension as to what the law required. The Subordinate Judge in the lower Appellate Court was right in his view that Section 10 of the Carriers Act of 1865, which was enacted in Act X of 1899, applied to the circumstances of this case. The Munsif, however, did not take that view, nor does it seem to have been presented to him by the parties; and it is clear from the terms of his judgment and the manner in which he formulates the points for determination that this section (Section 10) was not present to his mind, Now, Section 10 raises a question of fact: and, had proper issues been settled under Order XIV, the issue appropriate in the light of that section would have been framed and tried. It was not done, and so

the position arose which is contemplated in Order XLI, Rule 25, which deals with the circumstances under which the Appellate Court may frame issues and refer them for trial to the Court whose decree is appealed from. The Appellate Court perceived that the Court of first instance had omitted to frame and try the requisite issue as to the service of notice in writing of the loss or injury, but failed to utilize the procedure contemplated in Rule 25 of Order XLI. In the circumstances of the case, this was a material irregularity in the exercise by the Appellate Court of its jurisdiction--an irregularity which, for aught we can tell, may have led to an injustice in this case. The result is that we must make the Rule absolute, set aside the decree of the Appellate Court and send back the case to that Court in order that it may frame the requisite issues and refer the same for trial to the Court from whose decree the appeal was preferred.

2. The costs of this Rule will abide the result, and we assess the hearing fee at two gold mohurs.

N. Chatterjea, J.

3. I agree.

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