

Sitansujibon Mitra Vs. Dilip Kumar Dutta Gupta and ors.

Sitansujibon Mitra Vs. Dilip Kumar Dutta Gupta and ors.

SooperKanoon Citation : sooperkanoon.com/874466

Court : Kolkata

Decided On : Apr-26-1950

Reported in : AIR1951Cal1,54CWN782

Judge : Roxburgh, J.

Acts : [Code of Civil Procedure \(CPC\) , 1908](#) - Section 115; ;[Constitution of India](#) - Article 227

Appeal No. : Civil Rule No. 1391 of 1949

Appellant : Sitansujibon Mitra

Respondent : Dilip Kumar Dutta Gupta and ors.

Advocate for Def. : Benode B. Haldar, Adv.

Advocate for Pet/Ap. : Syama Charan Mitter, Adv.

Judgement :
ORDER

Roxburgh, J.

1. This is a rule purporting to be issued under Section 115, Civil P. C., against an order of a Munsif cutting down a Pleader Commissioner's bill from an amount of Rs. 1000 odd to an amount of Rs. 300 only on the ground that some unnecessary

work had been done 'by the Pleader 'Commissioner.

2. The order was first passed on 15-6-1949 when it is stated that although the Commissioner had received notice (vide Order No. 92 dated 20-4 1949.) he had not appeared. This seems to me on a perusal of the record to be, to put it mildly, a somewhat unfair statement. It appears to me that the mutter of the bill was pending and on 20-4-1949 an order was passed noting that the bill had not been disposed of and 5th May was fixed for hearing in the presence of the Commissioner. The Commissioner was duly informed of this. On the 6th May, the order is: 'Pleaders are not available. To the, date fixed for hearing the above matter.' Exactly what that means is obscure. Apparently, it must be taken to mean that the question of the bill would be considered on the date fixed for peremptory hearing which was 2-6-1949. At any rate, 2-6-1949 was the only date fixed for any hearing in connection with the case. On that date, the case was heard and also on subsequent days (at intervals). Finally, arguments were heard on the 16th June and 22nd June was fixed for delivery of judgment. Then appears in the handwriting apparently of the Munsif Order No. 101 dated 22-6-1949, overwritten 15-6-1949, I have no hesitation in holding that the learned Munsif's statement that the Commissioner was absent without notice was a deliberate misstatement of fact and that in fact the order in question was really passed on the date fixed for judgment on the 22nd June. It was later appreciated that it was difficult to pin the Commissioner to that date (22nd June) and the date was altered accordingly to 15th June. Incidentally, the whole attitude of the learned Munsif in this matter shows definite bias, in my opinion.

3. However that may be, on the 14th July the Commissioner filed a petition asking that he might be heard in the matter and on the 6th August the Munsif again rejected the application on further disingenuous reasons. First, he sticks to his view that in any case the bill ought not to be passed as presented. Secondly, he thinks he is not in a position to reconsider the order as the decree had already been drawn up.

4. As I have said, this is an application under Section 115, Civil P. C., and I must confess I find it difficult to see what powers are conferred on me under that section

to interfere with an order of that sort. The order is not really a judgment or a judicial order at all. In my opinion on the other hand, this would certainly seem to be a case which would have been covered by our powers of superintendence under Section 224, Government of India Act 1935, and similarly would also be covered by the power under Article 227 of the Constitution, even if the view be taken that the power conferred under the latter is not wider than that conferred under the former. It is under these provisions indeed that the Court has power to fix the fees to be paid in such matters and it is clearly ancillary to that that the Court has power to control orders to be passed in respect of such fees. The fact that the amount of fees determined is incidentally to be included in the decree to be paid by the parties does not make it a judicial order.

5. I understand that the Munsif's decree in this suit is the subject-matter of an appeal to the District Judge. Obviously, the Judge hearing the appeal will be in the best position to consider and decide whether the bill of the Pleader Commissioner should be passed as presented or any deduction should be made from it. I am informed further that in this case there was no scrutiny of the bill by the Sheristadar as required by the rules in the Civil Rules and Circular Orders. If this has not been done, this should first be done and then the matter can be disposed of by the Judge who would hear the appeal. Incidentally he will also be in a position, if necessary, to amend the decree in so far as it specifies the amount of the Commissioner's fees as part of the costs.

6. I, therefore, direct under the powers conferred on me under Article 227 of the Constitution that this matter be heard and disposed of by the Judge hearing the appeal against the original suit. I make no order as to costs in the present rule.