

from the station accompanied by a single mukhtear who, as it happened, was able to appear on behalf of the accused, although, of course, he knew nothing about his case. The only witnesses he could have examined were the by-standers who happened to have gathered round the catchery out of curiosity, and it cannot be said that those were the witnesses whom he voluntarily chose in his defence.

The proceedings clearly show that the man had not anything like a fair trial, and the order under section 110 must, therefore, be set aside, and if it is necessary to take further proceedings, these proceedings must be taken with due regard to the spirit as well as to the letter of the law. The petitioner will be discharged from the security bond.

E. H. M.

Rule absolute.

CIVIL RULE.

Before Coxe J.

RAJANI KANTA DAS

v.

KALI PRASANNA MUKHERJEE.

1914
 ———
 KERAMUD-
 DIN
 SARKAR
 v.
 EMPEROR.

1914
 ———
 Jan. 27.

Review—Dismissal of application for admission of second appeal—Application for review based on alleged discovery of new and important evidence—High Court, jurisdiction of—Civil Procedure Code (Act V of 1908) O. XLI, r. 11 and O. XLVII, r. 1.

The High Court has no authority merely on the ground of alleged discovery of new and important evidence to review an order dismissing an application for the admission of a second appeal under O. XLI, r. 11 of the Code of Civil Procedure.

*REVIEW in Civil Rule No. 1474 of 1913, against the order of Lalit Mohan Das, Subordinate Judge of Khulna, dated Dec. 23, 1912.

1914

RAJANI
KANTA DAS
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KALI
PRASANNA
MOOKER-
JEE.

Bhyrub Nath Toee v. Kally Chunder Chowdhry (1) followed.

Heera Lall Ghose v. Ram Taruck Dey (2) discussed.

Raru Kutti v. Mamad (3) and *In re Nand Kishore* (4) referred to.

RULE obtained by the petitioners, Rajani Kanta Das and another.

The plaintiffs brought a suit in the Court of the Munsif at Khulna for declaration that certain lands were their ancestral *niskar* lands and were not held by them as tenants under the defendants. This suit was dismissed by the Munsif on the 13th July 1911, and the plaintiffs appealed to the Court of the Subordinate Judge. On the 23rd December 1912, the Subordinate Judge dismissed this appeal. The plaintiffs then preferred a second appeal to the High Court but on the 27th June, 1913, this was also dismissed under Order XLI, rule II of the Code of Civil Procedure, 1908. The plaintiffs subsequently applied for a review of judgment on the ground of the discovery of new and important evidence in their suit, and obtained this Rule on the defendants to show cause why the appeal should not be reheard.

Babu Jadunath Kanjilal, for the opposite party, took the preliminary objection that no application for review lay in cases under Order XLI, rule 11 of the Code of Civil Procedure, 1908, and relied on the case of *Bhyrub Nath Toee v. Kally Chunder Chowdhry* (1) as also on the cases of *Raru Kutti v. Mamad* (5), *In re Nanda Kishore* (6) and *Panchanan Mookerjee v. Radha Nath Mookerjee* (7).

Babu Jadunath Mandal, for the petitioners, urged that the admission of a certain document in support

(1) (1871) 16 W.R. 112.

(2) (1875) 23 W.R. 323.

(3) (1895) I.L.R. 18 Mad. 480.

(4) (1909) I.L.R. 32 All. 71.

(5) (1895) I.L.R. 18 Mad. 480.

(6) (1909) I.L.R. 32 All. 71.

(7) (1870) 4 B.L.R. (A.C.J.) 213.

of the new evidence would supply the link of evidence in the case and establish the point of law, and that Order XLVII, rule 1, did not lay down any limitation to a review of judgment. He relied on the case of *Heera Lall Ghose v. Ram Taruck Dey* (1) and referred to *Sahebjan Bibee v. Syud Sufdur Ali* (2).

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RAJANI
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JEE.

COXE, J. This was a Rule on the opposite party to show cause why an appeal should not be reheard on the ground of the discovery of new and important evidence. A preliminary objection is taken that an application of this kind cannot be made after the disposal of a second appeal. The preliminary objection is supported by the decisions in *Bhyrub Nath Toee v. Kally Chunder Chowdhry* (3) *Raru Kutti v. Mamad* (4) and *In the matter of the Petition of Nand Kishore* (5). The first of these rulings is binding upon me and I must, therefore, hold that this application cannot be granted. Reference is made by the other side, to the case of *Heera Lall Ghose v. Ram Taruck Dey* (1). But the observations by the learned Judges in that case do not amount to a decision which can be weighed against the decision in *Bhyrub Nath Toee v. Kally Chunder Chowdhry* (3) inasmuch as the learned Judges refused the application for review, and their observations, therefore, can only be regarded as *obiter dicta*.

The Rule is discharged with costs.

Let the documents filed by the petitioners be returned.

O. M.

Rule discharged.

(1) (1875) 23 W. R. 323.

(3) (1871) 16 W. R. 112.

(2) (1874) 22 W. R. 288.

(4) (1895) I. L. R. 18 Mad. 480.

(5) (1909) I. L. R. 32 All. 71.