

1914
 MAHOMED
 HOSSAIN
 v.
 EMPEROR.

The trial appears to us to have been vitiated by these errors, and the conviction and sentence are, therefore, set aside. We do not order a retrial because the accused has already been 21 days in jail, and we consider that is sufficient to meet the ends of justice in this case. The petitioner will be discharged from his bail unless he is required to answer to any other charge.

E. H. M.

Rule absolute.

APPELLATE CIVIL.

Before Carnduff and Richardson JJ.

1914
 Jan. 13.

HARI CHARAN SAHA

v.

BARAN KHAN.*

Review—Appeal against order granting review of judgment—Civil Procedure Code (Act V of 1908) O. XLIII, r. 1, cl. (w) and O. XLVII, r. 7.

O. XLIII, r. 1, cl. (w), must be read with and subject to r. 7, O. XLVII. An order granting application for review of judgment can only be objected to on grounds specified in r. 7 of O. XLVII.

Jugernath Pershad Singh v. Ram Aular Singh (1) Tripura Charan Kal v. Sorashi Bala (2), Surendra Nath Talukdar v. Sita Nath Dass Gupta (3) referred to.

APPEAL by Hari Charan Saha and others, the defendants.

*Appeal from Order, No. 418 of 1912, against the order of Lal Behari Bhaduri, officiating Subordinate Judge of Backergunge, dated May 3, 1912.

(1) (1911) Mis. A. No. 341 of 1909 (2) (1913) C. Rule No. 123 of 1913
 (Unrep.) (Unrep.).

(3) (1913) Mis. A. No. 188 of 1912 (Unrep.)

1914
HARI
CHARAN
SAHA
v.
BARAN
KHAN.

This appeal arose out of an application for a review of judgment under O. XLVII, r. 1, of the Code of Civil Procedure. The plaintiffs-respondents instituted a suit for redemption of a certain mortgage in the Court of the district Judge of Barisal. In that suit the plaintiffs omitted to join two persons named Madan and Haran as party defendants. The suit was accordingly dismissed for non-joinder of necessary parties, and the plaintiffs' application for addition of the two new defendants was rejected.

Thereupon, the plaintiffs applied for review of judgment under O. XLVII, r. 1, of the Code of Civil Procedure and the Court below granted the application for review and allowed Haran and Madan to be joined as defendants, holding that there was sufficient reason for granting the review of judgment prayed for. Against the order aforesaid the defendants preferred this appeal to the High Court.

Babu Dwarka Nath Chuckerbutty (with him *Babu Gopal Chandra Dass*), for the appellants. The review ought never to have been granted. There was no sufficient reason shown for granting the application.

Babu Heramba Chandra Guha, for the respondents, submitted that the appeal itself was incompetent inasmuch as under O. XLVII, r. 7, no appeal would lie except upon grounds stated therein and that r. 1 of O. XLIII, cl. (w) governed O. XLVII, r. 7, of the Code of Civil Procedure.

CARNDUFF AND RICHARDSON JJ. This is an appeal against an order granting a review of judgment.

The first question that arises is whether it is competent or not.

Order XLVII, rule 7, of the Civil Procedure Code, provides that an order rejecting an application for

1914
 HARI
 CHARAN
 SAHA
 v.
 BABAN
 KHAN.

review shall not be appealable, but that an order granting such an application may be objected to on certain grounds. None of those grounds can be asserted in this case, and it is quite clear that, in so far as rule 7 of Order XLVII goes, no appeal lies.

But it is contended that an appeal lies under Order XLIII, rule 1, clause (w), which provides in general terms for an appeal against "an order under rule 4 of Order XLVII granting an application for review."

It has, on at least three occasions, been held by this Court that Order XLIII, rule 1, clause (w), must be read with, and subject to, rule 7 of Order XLVII. We refer to the unreported decisions in *Jugernath Pershad Singh v. Ram Autar Singh* (1), *Tripura Charan Kal v. Sorashi Bala* (2) and *Surendra Nath Talukdar v. Sita Nath Dass Gupta* (3). Following those three decisions, we must hold that this appeal is incompetent and should be dismissed with costs.

S. K. B.

Appeal dismissed.

(1) (1911) Mis. A. No. 341 of 1909
 (Unrep.).

(2) (1913) C. Rule No. 123 of 1913
 (Unrep.).

(3) (1913) Mis. A. No. 188 of 1912 (Unrep.).