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CHANDAN-MULL KANORIA v. DEBI CHAND.

PAGE J.

Bearing in mind the evidence adduced at the hearing of this suit, and having regard to all the circumstances, I am not disposed to vary the decree which has been passed.

I hold that this application has been misconceived, and I dismiss it with costs.

Attorneys for the plaintiff: *Pugh & Co.*

Attorney for the defendants: *P. N. Sen.*

N. G.

CIVIL RULE.

Before Rankin and B. B. Ghose JJ.

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July 10.

BINDUBASHINI ROY CHOWDHURY

v.

SECRETARY OF STATE FOR INDIA*.

Review—"Sufficient cause", meaning of—Negligence of pleader—Enquiry under s. 19 H of the Court-fees Act (VII of 1870)—Civil Procedure Code (Act V of 1908), O. XLVII, r. 1.

Where in an enquiry under s. 19 H of the Court-fees Act the Government pleader was not ready to go on with the case on the date fixed and the Court dismissed it, but afterwards granted a review "for other sufficient reason" and restored the case:

Held, that the order was bad in form and in substance.

There is no authority for the notion that parties whose cases are fixed have a sort of right to get adjournments without any reason being given provided that somebody else undertakes to keep the Court busy.

Obiter: The Court should treat the learned vakil who has the honour to appear for Government with the same stringency as, but with no greater stringency than, any of his learned friends appearing for other litigants.

* Civil Rule No. 309 of 1923 issued by this Court in the matter of s. 115 of the Civil Procedure Code, 1908, and in the matter of Review Case No. 1 of 1923, arising out of Miscellaneous case No. 2 of 1922 of the Court of the Additional District Judge of Faridpur.

It is not in almost every case where there was some little excuse for a manifest negligence, that the Court would be entitled to re-open the matter by granting a review.

Under the words "other sufficient reason" the reason must be one having a sufficiency of a kind analogous to the two specified cases, that is to say, analagous to excusable failure to bring to the notice of the Court new and important matter, or analogous to errors on the face of the record.

Chajju Ram v. *Neki* (1) followed.

CIVIL RULE obtained by Bindubashini Chowdhury, the objector.

The facts out of which this matter arises are briefly as follows: The objector applied for probate of a will. The Collector of Faridpur moved the Court under section 19 H (4) of the Court-fees Act for an enquiry as to the true valuation of the estate of one Sourindra Mohun Roy. Accordingly Miscellaneous Case No. 2 of 1922 was started on the 13th December 1922, the 6th January 1923 being fixed for hearing. On that day both sides applied for time. At first the enquiry was adjourned to the 20th January for hearing, but afterwards the case was taken up on 6th January on the Government Pleader applying therefor as two of his witnesses had turned up and evidence was recorded. Subsequently on the 9th January the Court passed orders finding the value stated in the application for probate to be the true value of the estate. Thereupon an application for Review was filed on behalf of the Secretary of State for India in Council at the instance of the Collector and Babu Rasick Behari Chakravarti, the acting Government Pleader, gave evidence on behalf of the applicant. In support of this application for review it was contended that the Government Pleader was under the impression that a short adjournment would

(1) (1922) L. R. 49 I. A. 144: 26 C. W. N., 697.

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be granted after recording the evidence of the two witnesses who were present on the first date of hearing, and that had an opportunity been given, satisfactory evidence would have been adduced by Government and the finding as to the true valuation of the estate in suit would have been quite different. It was further urged that the matter involved a fiscal question affecting Government revenue and therefore an adjournment should have been given to produce all the materials before the Court to enable it to come to a correct decision as to the valuation of the estate in question.

This application for review having been granted as coming within the provisions of the clause "for other sufficient reason" contained in rule 1 of Order XLVII of the Code of Civil Procedure the objector (opposite party in the review application) moved the Hon'ble High Court under sec. 115 of the Code of Civil Procedure and obtained this Rule.

Babu Rupendra Coomar Mitter (with him *Babu Shyama Prosad Mukherjee*), for the petitioner. The words "sufficient reason" in Order XLVII, rule 1, of the Code of Civil Procedure, have been interpreted by the Judicial Committee in the case of *Chajju Ram* v. *Neki* (1) where there was "no reason analogous to the two specified", *i.e.*, "no excusable failure to bring to the notice of the Court new and important matters". I submit that if a party does nothing when he should have been searching for evidence he cannot be permitted to apply for a review on grounds attributable to his own laches: *Binda Prosad* v. *Raghubir Saran* (2) and *Wahed Ali* v. *Chand Mia* (3). In allowing this application for review on the grounds

(1) (1922) L. R. 49 I. A. 144; 26 C. W. N. 697.
(2) (1915) I. L. R. 37 All. 440.
(3) (1919) 30 C. L. J. 250.

stated in the petition of the 6th January the Court has gone beyond the powers conferred upon it by the Code of Civil Procedure, and therefore on the ground of jurisdiction the order granting the review can be revised by the High Court under the provisions of section 115 of the Code: See *Hindley* v. *Joynarayan Marwari* (1).

The Junior Government Pleader (*Babu Surendra Nath Guha*), for the opposite party. It is in the discretion of the High Court to exercise the powers conferred on it under section 115 of the Code of Civil Procedure, and for two reasons this is not a fit case for interference, (*i*) the effect of interference by this Court will be to shut out a trial on the merits, and (*ii*) Government revenues ought to be protected. I submit that this matter does not come within the provisions of section 115 of the Code. At the most the Court below has placed a wrong interpretation upon Order XLVII, rule 1; but that is merely an error of law and not an illegality, or want of jurisdiction.

Babu Rupendra Coomar Mitter, in reply. In any civilised form of Government the claim of the Government to have greater rights than its subjects in a court of law is preposterous and the Government Pleader can have no pretence to greater indulgence than any other legal practitioner. There was gross negligence on the part of the Government (the opposite party), and as the same indulgence would never have been shown by the Court below to a subject or his pleader as has been done in this case to the Government Pleader, the Hon'ble High Court ought to interfere on principle, especially when there has been an usurpation of jurisdiction by the Court below.

(1) (1919) I. L. R. 46 Calc. 962.

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RANKIN J. This is an application in revision whereby an applicant for probate complains of an order made by the Court below granting a review in a proceeding under section 19H of the Court-fees Act being a proceeding wherein the Collector moves the Court to hold an enquiry into the true value of the estate of the testator. Broadly speaking, the facts are that the case was ordered to come on for hearing on the 6th January 1923. On that date neither party was ready. Both parties appear to have applied for an adjournment, and the learned Judge at first was minded to grant them an adjournment till the 21st January. Shortly afterwards, two witnesses for the Collector put in appearance and the order granting the adjournment was vacated and the case commenced notwithstanding the objections of the pleader for the present petitioner. The two witnesses on behalf of the Collector were heard and they did not take the case for the Collector any further. The Government pleader wanted an adjournment but it was not granted. It would appear that the petitioner also at one time wanted an adjournment: but the learned Judge insisted on proceeding. A third witness on behalf of the Collector after some delay was called. He again took the case no further. Thereupon, the learned Judge reserved his judgment and, on the 9th January, he recorded his order in favour of the applicant for probate that the value of the property was as stated in the affidavit filed by her. Thereupon, on the 16th January 1923, a petition for review was lodged before the learned Judge who tried the case by the Collector. That petition appears to have contained some seven grounds. In my judgment, the learned Judge's comments upon these grounds as being insufficient for the granting of a review are well justified. However, having some doubt about

the matter, the learned Judge directed notice to issue, upon the Collector depositing Rs. 100 as security for the present petitioner's costs, and the matter came on before another learned Judge who recorded his order on the 24th February 1923. Against that order the present application in revision is made and it is said that the learned Judge misdirected himself as to his own power and failed on his findings of fact to arrive at a position in which he was entitled to order a review.

Now on the question of jurisdiction, the judgment of the 24th February 1923 appears to me to amount to this: On the evidence of the Government pleader who deposed in the case, the Judge was satisfied, that the Government pleader was under the impression that on the 6th January the case would not be taken up. He appears to think that this impression was not altogether without some element of reason; but that the impression was a justifiable impression—that it was reasonable for the Government pleader or his client to take the risk of acting upon it—is a fact which is not found by the learned Judge and, to my mind, it is a finding which would be very difficult indeed to come to upon these materials. In these circumstances, the learned Judge thought that it was a case for the exercise of his powers to grant a review not under the two express provisions of rule 1 of Order XLVII, C. P. C., namely, the provisions about discovery of new and important matter or evidence and the provision about mistake or error on the face of the record but under the words "for any other sufficient reason". The question of law is whether the facts as found constitute within the meaning of the rule "other sufficient reason" remembering that the Privy Council in the case of *Chajju Ram* v. *Neki* (1) have laid it

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down that those words are to be construed in the light of the previous words and on the principle of *ejusdem generis*. The case is perhaps near the border line. The effect of *Chhajuram's* case (1) in my judgment, is that, under the words "other sufficient reason", the reason must be one having sufficiency of a kind analogous to the two specified cases, that is to say, analogous to excusable failure to bring to the notice of the Court new and important matter or analogous to error on the face of the record. Now, the case of a person who has discovered a new and important matter or who has discovered evidence which could not be produced by him at the time when the decree was passed is dealt with very strictly by rule 4. There is to be *strict proof* of the discovery of the new matter or evidence, which the applicant alleges was not within his knowledge or could not be adduced by him, when the decree or order was passed or made. On the whole, I am of opinion that the findings of fact made by the learned Judge did not entitle him to exercise the power granting a review. In this case, there is not merely an element of negligence, that is to say, it is not merely that by greater diligence the person could have had better knowledge of his case or a better chance of producing evidence which he knew not; but the present case seems to me on these findings to be a case where for no adequate reason the party had not been ready on the date solemnly fixed for the purpose and had no real excuse for not being ready. When the rule makes the jurisdiction dependent upon a reason being sufficient, it is very undesirable that orders of the learned Judges who have applied their minds to the rule properly should be interfered with in revision so long as there is a case for thinking that the reason

(1) (1922) L. R. 49 I. A. 144; 26 C. W. N. 697.

was sufficient in a sense analogous to the cases specially dealt with. I cannot help, however, in this case feeling that the logic of the order made by the Court below is this : that in almost every case where there was some little excuse for a manifest negligence, the Court would be entitled to reopen the matter by granting a review. I think this case, if we refuse to interefere, would be *pessimi exempli* and would make a large gap in the safeguard intended by Order XLVII of the Code. For that reason and because it seems to me that the ground here was very thin and was not really analogous in point of excuse to the cases mentioned in rule 1 itself, I think we are in a position to give effect in revision to our opinion which is that this order which is complained of is bad in form and in substance.

I would point out in view of what has been said by the learned Judge who tried the case that I do not understand it to be the duty of the learned Judges in the Courts below to maintain, still less to invent, any special practice as regards the grounds upon which adjournments of cases are given. I cannot help thinking that some of the present troubles have arisen by reason of the notion that parties whose cases are fixed have a sort of right to get adjournments without any reason being given provided that somebody else undertakes to keep the Court busy. If there is any such practice in any Court, so far as I know, there is no authority for it. A learned Judge has the very widest discretion as to granting adjournments; but it should always be based upon something reasonable.

In the course of the case in the Court below, a reason was given as being a reason why discretion should be exercised in favour of granting a review to the effect that the matter was one affecting revenue and that, therefore, any negligence on the part of the

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Government pleader should not be allowed to damage the public. When a matter is one in which a Judge is called upon to exercise a discretion, it is generally impossible to say *a priori* that a particular thing can never properly be considered and should always be excluded. As a matter of my own individual opinion, I desire to say that I should treat the Secretary of State for India in Council exactly like anybody else. It often falls to the Court in dealing with applications by poor people, negligent people or rather stupid people, to refuse to meet their particular necessities and to exact a particular reasonable standard of diligence, exacting it from everybody alike; and, speaking for myself, I think the safer and the better way is to treat the learned vakil who has the honour to appear for Government with the same stringency as, but with no greater stringency than, any of his learned friends appearing for other litigants. These observations, however, are *obiter*. I think that in this case it is not open to us to refuse to exercise our discretion. In my opinion, we should set aside the order of the Court below and direct that the original decision of the learned Judge be restored. The costs of this application and the costs incurred in the application for review are to be paid by the opposite party to the present petitioner. We assess the hearing fee in this Court at three gold mohurs.

GHOSE J. I agree.

G. S. *Rule absolute.*