

1911  
January 5.

*Before Sir John Stanley, Knight, Chief Justice, and Mr. Justice Banerji.*  
THE BANK OF BENGAL, CAWNPORE (DEPENDANT), v. KALKA DAS  
AND ANOTHER (PLAINTIFFS).\*

*Rules of Court of the 4th April, 1894, rule 80 (1) proviso—Pleader's fees—  
Fee certificate not filed at or before the hearing—Fee not paid before  
hearing—Discretion of Court.*

*Held* on a construction of rule 80 (1) of the rules of Court of the 4th April, 1894, that the *proviso* to rule 80 only gives a court a discretion to accept a certificate for fees filed after the commencement of the hearing, but, whatever might have been intended, leaves no discretion as to the allowance, on taxation, of a fee which in fact was not paid on or before the first hearing.

THIS was a suit for a declaration of the plaintiffs' title to certain moneys in the custody of the Bank of Bengal. The only question raised by the appeal was as to the disallowance by the Court of the fees of the pleader appearing for the Bank, which the Court considered itself unable to allow, having in view the proviso to rule 80 (1) of the rules of Court of the 4th April, 1894, by reason of the said fees not having in fact been paid at or before the first hearing, although it permitted a fee certificate to be filed after the first hearing. The facts of the case are fully stated in the judgement of the Court.

Mr. B. E. O'Connor, for the appellants.

Mr. M. L. Agarwala, for the respondents.

STANLEY, C. J. and BANERJI J.,:—The only question in this appeal is concerned with the pleader's fee. The suit was brought by the plaintiffs to have a declaration of their title to certain moneys held by the Bank. The Bank was prepared to hand over the moneys to the persons entitled, whoever they might be, and only required to be satisfied that the plaintiffs were the parties so entitled. The case was taken up late on the afternoon of the 3rd of September, and on a representation by the pleader for the Bank that the agent of the Bank was not present and the certificate required by the rules of the court as to the payment of fees could not be verified, the court intimated that the certificate would be accepted afterwards. On the following day the case appeared on the list, and, after some formal matters were disposed of, was adjourned to the 17th of September. On the 16th of September the pleader's fee was

\* First Appeal No. 2 of 1910 from a decree of Mohan Lal Hukku, Subordinate Judge of Cawnpore, dated the 22nd of September, 1909.

paid and a certificate filed, and the case was adjourned to the 21st of September when the arguments were heard. Judgement was delivered on the 22nd of September. The result of the suit was that the claim was decreed but costs were awarded to the Bank. Only Rs. 2-8-0 were allowed in respect of costs; the pleader's fee not being allowed on the ground that it was not paid before the commencement of the hearing of the suit. This appeal has been preferred in respect of the pleader's fee, and it has been contended before us by the learned counsel for the Bank that inasmuch as the court intimated that the certificate would be accepted after the first hearing that the fee ought to have been allowed. The court below in its order in reference to the fee stated that in intimating that "the defendant would be justified in producing the required affidavit and certificate on the next following date" it did not undertake to condone the defendant's failure to file this document up to the 16th of September, 1909. The learned Subordinate Judge referred to the rules of the High Court on the subject and decided that he could not allow the pleader's fee to be included in the costs in the decree. Rule 80(1) of the rules of the 4th of April, 1894, as amended, provides that "In drawing up a decree or order no fee to any legal practitioner, not appearing for the Crown \* \* \* shall be allowed on taxation between party and party \* \* \* unless the Munsarim, or, on application to the Judge, the Judge is satisfied that the fee was paid to such legal practitioner at or before the commencement of the hearing of the suit or application \* \* \* and unless at or before such time there shall have been delivered to the Munsarim a certificate signed by the legal practitioner certifying the amount of the fee or fees actually paid to him \* \* \* together with an affidavit made by such client or his authorized agent". This rule, we may observe, prescribes that the court shall be satisfied that the fee is paid to the pleader at or before the commencement of the hearing of a suit, as also as to the delivery to the Munsarim of a certificate signed by the legal practitioner certifying the amount of the fee or fees actually paid to him. In this case the fee was not paid until the 16th of September, that is, nearly a fortnight after the commencement of the hearing

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of the suit. Consequently the court was justified in the course which it took in refusing to allow the appellant's pleader's fees. But it is said that the *proviso* to the rule in question meets this case. That *proviso* runs as follows:—"Provided that in any case the presiding officer may, for valid reasons to be recorded by him, accept a certificate for fees filed after the time mentioned above." It will be observed that this *proviso* only enables a presiding officer to exercise a discretion as to whether or not he will accept a certificate for fees filed after the commencement of the hearing. It gives him no discretion in regard to the allowance of a fee which was not paid at or before the commencement of the suit. It may be, when these rules were drawn up, that it was intended to give the presiding officer a general discretion in the matter of a fee tardily paid: but if this was intended, it is certainly not expressed in the *proviso* as it at present stands. In view of this rule we think that the court below rightly refused to allow the pleader's fee in this case. We dismiss the appeal, but under the circumstances without costs.

*Appeal dismissed.*

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*Before Mr. Justice Richards and Mr. Justice Tudball.*

THE SECRETARY OF STATE FOR INDIA IN COUNCIL (OPPOSITE PARTY)  
v. BISHIAN DAT (APPELLANT).\*

*Act No. I of 1894 (Land Acquisition Act), sections 9, 25—Omission to attend in answer to notice—Owner not entitled to claim more than was awarded by the acquisition officer.*

It is intended by section 9, clause (2) of the Land Acquisition Act that the owner of property about to be acquired should appear and state his claim in the manner provided by the clause so as to enable the acquisition officer to make a fair, reasonable and proper award based upon a proper inquiry after the proper means have been placed before him for holding such inquiry. Section 25, clause (2), makes the refusal or omission to comply with the provisions of section 9 (2) without sufficient cause an absolute bar to the obtaining of a greater sum than that awarded by the Collector.

This was an appeal arising out of a reference under the Land Acquisition Act, 1894. The acquisition officer awarded Rs. 3,450 as the price of the land to be acquired. The owner

\* First Appeal No. 293 of 1909 from a decree of Prag Das, officiating District Judge of Allahabad, dated the 3rd of July, 1909.