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Magistrate that the offence should be inquired into. I am not prepared to exercise my revisional powers and I dismiss the application.

Application rejected.

APPELLATE CIVIL.

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January, 21.

Before Mr. Justice Tudball and Mr. Justice Walsh.

PALLIA (PLAINTIFF) *v.* MATHURA PRASAD (DEFENDANT).*

Civil Procedure Code (1908), *order XLVII, rule* 9—*Review of judgement—Second application for review—Practice.*

Semble—that there is nothing in the Code of Civil Procedure which prevents a second application for review being made after a previous application for review has been made and rejected. *Gobinda Ram Mondal* v. *Bhola Nath Bhatta* (1) referred to.

IN a suit on a promissory note the defendant pleaded that the plaintiff was a minor at the date of the making of the note and hence incompetent to enter into a contract. The first court upheld this plea and dismissed the suit. On appeal, the District Judge reversed the finding as to the plaintiff's minority and decreed the suit. Afterwards the defendant made an application to the District Judge for review of judgement on the ground of the discovery of new and important evidence, namely a *patra* or entry relating to the date of the plaintiff's birth. That application was disallowed. Some time later, a second application for review of judgement was made by the same party on the ground of the discovery of an application which had been made under the Guardian and Wards Act for the appointment of a guardian of the plaintiff, together with the certificate of guardianship granted thereon. This second application was allowed. Hence the appeal.

Mr. *M. L. Agarwala*, for the appellant :—

A second application for review of the same judgement does not lie under the Civil Procedure Code. The provisions of section 114 and of order XLVII, Civil Procedure Code, contemplate and allow only one review of a judgement. To hold otherwise would put no limit to the plurality of reviews of the same

* First Appeal No. 133 of 1915, from an order of Guru Prasad Dube, Additional Subordinate Judge of Bareilly, dated the 23rd of June, 1915.

(1) (1888) I. L. R., 15 Calc., 432.

judgement; *Vencama Shetty* v. *Pamoo Shetty* (1). A second application for review is tantamount to a review of a review which is expressly prohibited by order XLVII, rule 9. The judgement passed after the first review takes the place of the original judgement and the second application would be really to review the first review. He then argued on the merits of the application.

Babu *Sital Prasad Ghosh*, for the respondent :—

A second application for review of judgement on the discovery of new and important evidence which was not available to, or within the knowledge of, the applicant at the date of the first application for review is not prohibited by the Code; *Gobinda Ram Mondal* v. *Bhola Nath Bhatta* (2) and *Surrut Coomari Dassee* v. *Radha Mohun Roy*. (3) The latter case, though not decided under the Code itself, supports me in principle. He then argued on the merits of the case.

TUDBALL, J.—This appeal arises out of an order granting an application for review of judgement. The facts of the case are as follows:—One Mathura Prasad, the respondent before us, executed a promissory note in favour of one Shiam Behari. The latter died and his widow Musammat Pallia, the appellant before us, sued to recover the debt. One of the pleas taken in defence was that at the time when the money was lent, or said to have been lent, Shiam Behari was a minor and therefore the transaction was void. The court of first instance dismissed the suit. The court of appeal, on the 18th of June, 1914, decreed the suit. Shortly afterwards the defendant Mathura Prasad applied to the court for review of judgement on the ground of discovery of new and important evidence which he was unable to produce before the court at the hearing of the case. That evidence apparently was a *patra*. The court rejected the application on the 14th of November, 1914. On the 25th of April, 1915, Mathura Prasad put in a second application for review of the judgement of the 18th of June, 1914, on the ground that he had discovered some fresh evidence, namely, an application by the grandfather of Shiam Behari to be appointed guardian of Shiam Behari and a certificate of guardianship granted by the District Judge which went to

(1) (1870) 5 Mad. H. C. Rep., 323. (2) (1838) I. L. R., 15 Calc., 432.
(3) (1895) I. L. R., 22 Calc., 784.

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show that Shiam Behari was a minor at the date of the transaction. Musammat Pallia objected that no second application for review could under the law be made; secondly, that the application was out of time and that sufficient cause had not been shown and, thirdly, that the evidence was inadmissible and could not be considered. The court below decided in favour of the applicant, Mathura Prasad, and granted the application. Musammat Pallia has come here on appeal and the same three points are raised before us. In regard to the first point that no second application for review could be entertained by the court below, I find it unnecessary, in the view I have taken of the merits, to decide this point. But I may say that I should find it difficult to come to any other decision than that which was arrived at in the case of *Gobinda Ram Mondal* v. *Bhola Nath Bhatta* (1). It is clear to me that the application for review ought to have been rejected by the court below. I have examined the evidence produced by the applicant in the court below. He examined himself and one Ram Sahai to show to the court the manner in which he discovered the present evidence. The statement of these two persons is simply to this effect that Mathura Prasad went to Ram Sahai to borrow from him some money to pay the decree, whereupon Ram Sahai pointed out to him that no decree ought to have been passed as Shiam Behari was a minor and his grandfather Saya Mal had actually been appointed guardian by the District Judge. Thereupon Mathura Prasad made inquiries through a pleader and discovered the statement to be correct, whereupon he made the second application for review. Now Ram Sahai is related to Mathura Prasad. At the hearing of the original suit one Brij Lal was a witness on behalf of Mathura Prasad. The latter has admitted that Brij Lal and he were partners in a business and also that Brij Lal and Shiam Behari, the alleged minor, were relations and co-sharers in the same property. Mathura Prasad has not attempted in his evidence to show that he made any attempt or exercised any diligence whatsoever in seeking for the evidence which he has now produced to establish the minority of Shiam Behari. The Judge in the court below seems to have been satisfied by holding that Mathura Prasad had no previous

(1) (1883) I. L. R., 15 Calc., 432.

knowledge of the evidence. Of course it is highly probable that he had no such knowledge; but order XLVII, rule 1, distinctly lays down that any person considering himself aggrieved by a decree or order and who from discovery or new and important matter or evidence *which after the exercise of due diligence was not within his knowledge* or could not be produced by him at the time when the decree was passed, may apply for a review of judgement to the court which passed the decree or order. The circumstances of the case seem to me to be such that if Mathura Prasad had exercised any diligence whatsoever the evidence which he now wishes to tender could easily have been discovered by him. The parties reside in Bareilly and are greatly concerned with each other. The court of the District Judge is within a mile of Mathura Prasad's residence, and I find it impossible to hold that Mathura Prasad exercised due diligence in the matter. The third point raised relates to the admissibility of the evidence which Mathura Prasad has given. In the circumstances of the case it is unnecessary to enter into the question or decide it. The result is that I would allow this appeal and set aside the order of the court below with costs here and in the court below.

WALSH, J.—I agree. I think the learned Judge unfortunately ignored the important words in the clause with which he was dealing and under which the application for review was made to him, namely, "after the exercise of due diligence." Now those words are put there for excellent reasons. The party who fails to get necessary evidence for the original trial and therefore fails in his suit is given certain privileges, and an opportunity to get his case re-heard. He is not entitled to ask for those privileges unless he satisfies certain clear statutory requirements. One of those requirements, in justice to the other party, is that he must have exercised due diligence in the preparation of his case. Now the question whether he has exercised due diligence or not involves two inquiries. The first is as to what he might have done, and the second is as to what he has in fact done. As my learned brother has pointed out, this was a question merely of the discovery of a certificate of guardianship in the city of Bareilly where the applicant resided. He had ten months to make the discovery. Unfortunately in the judgement before us the learned

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Judge does not appear to have directed himself either to the question of what he might have done, or to the question of what he did, and in quoting the rule under which he was exercising his jurisdiction, he left out that important requirement. His order cannot be supported.

I agree with my learned brother's view as regards the Calcutta decision. . . . I think that in cases where no question of principle, but only a question of practice or procedure arises, it is well to follow the decisions of the High Courts in other provinces as far as possible and having regard to the fact that the decision of the Calcutta Bench was passed as long as thirty-three years ago, speaking for myself, I should prefer to follow and adopt that ruling.

BY THE COURT.—The appeal is allowed and the order of the court below is set aside with costs in both courts.

Appeal allowed.

REVISIONAL CRIMINAL.

1916
January, 28.

Before Mr. Justice Piggott.

EMPEROR *v.* MURLI DHAR AND ANOTHER *

Act No. XLV (Indian Penal Code), section 228—Intentional insult to an officer sitting judicially—Application for transfer.

An accused person in an application for transfer of the case pending against him made an assertion to the effect that the persons who caused the proceeding to be instituted were on terms of intimacy with the officer trying the case and that therefore he did not expect a fair and impartial trial. *Held* that, there being no intention on the part of the applicant to insult the court, but merely to procure a transfer of his case, he was not guilty of an offence under section 228 of the Indian Penal Code. *Queen-Empress* v. *Abdulla Khan* (1) followed.

THE facts of this case were as follows:—

One Murli Dhar was being tried along with others by a Deputy Magistrate under section 107 of the Code of Criminal Procedure. During the trial Murli Dhar and his son Ganga Ram presented to the Magistrate an application for an adjournment

* Criminal Revision No. 958 of 1915, from an order of L. Johnston, Sessions Judge of Meerut, dated the 10th of March, 1915.

(1) Weekly Notes, 1898, p. 145.