

REVISIONAL CIVIL

Before Mr. Justice Bisheshwar Nath Srivastava, Chief Judge,
and Mr. Justice Ziaul Hasan

BARATI MIAN (OBJECTOR-APPLICANT) v. RAM ADHIN
(OPPOSITE PARTY)*

1936
December,

Civil Procedure Code (Act V of 1908), section 115 and order XXI, rule 58—Objections under order XXI, rule 58 dismissed on the ground of unnecessary delay—Opportunity not given to explain delay—Order, if could be interfered with in revision.

The proviso to order XXI, rule 58 allows the court discretion to dismiss an objection if it is designedly or unnecessarily delayed and the exercise of such discretion is not open to revision under section 115 of the Code of Civil Procedure but a court cannot dismiss an objection filed under order XXI, rule 58 summarily on the supposed ground that there is an unnecessary delay without giving an opportunity to the objector or his counsel to explain the delay. Where such opportunity is not given to the objector, the court acts with material irregularity in dismissing the objection and the order can be interfered with in revision. *Rajeshuri Bibi v. Hari Ram* (1), relied on.

Mr. G. H. Naqvi, for the applicant.

Mr. Naimullah, for the opposite party.

SRIVASTAVA, C.J. and ZIAUL HASAN, J.:—This is an application under section 115 of the Code of Civil Procedure for revision of an order of the learned Munsif of Bahraich summarily rejecting an objection made under order XXI, rule 58 of the Code of Civil Procedure on the ground of its being too late. The attachment in this case was made on the 24th of July, 1935 and the report of the process-server about attachment was to be made on the 13th of August, 1935. The objection was filed on the 13th of August and was summarily rejected by the learned Munsif the same day in his chamber. The proviso to order XXI, rule 58 allows

*Section 115 Application No. 99 of 1935, against the order of Babu Kali Charan Agarwal, Munsif of Bahraich, dated the 13th of August, 1935.

(1) (1933) A.I.R., All., 751.

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the court discretion to dismiss an objection if it was designedly or unnecessarily delayed. It is true that the exercise of such discretion is not open to revision under section 115 of the Code of Civil Procedure but as held by a Bench of the Allahabad High Court in *Musammrat Rajeshuri Bibi v. B. Hari Ram* (1), a court cannot dismiss an objection filed under order XXI, rule 58 summarily on the supposed ground that there is an unnecessary delay without giving an opportunity to the objector or his counsel to explain the delay. In the present case no such opportunity was allowed to the objector. We are therefore of opinion that the court acted with material irregularity in dismissing the objection in the way it did. We accordingly allow the application, set aside the order of the lower court and send the case back to the learned Munsif to determine whether there was any intentional or unnecessary delay after hearing the parties and in case it is found that there was no such delay then to dispose of the objection on the merits. Costs will abide the result.

Application allowed.

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1936
December, 1

BRIJ KISHORE AND ANOTHER (PLAINTIFFS-APPLICANTS) v.
LACHHMI NATH AND OTHERS (DEFENDANTS-OPPOSITE
PARTY)*

*Civil Procedure Code (Act V of 1908), order XLVII, rule 2—
Review—Redemption suit—Trial court allowing interest not
claimed by defendant—Error apparent not on face of decree
but on face of record—Application for review to successor
of trial Judge, whether competent.*

An application for review based on an error apparent on the face of the decree can be presented to the successor of the

*Section 115 Application No. 103 of 1935, against the order of Babu Hari Krishna Sinha, Munsif, North Hardoi, dated the 22nd of July, 1935.

(1) (1933) A.I.R., All., 751.