

RAJA PRITHWI CHAND LALL CHOUDHRY

1940.

v.

Mar. 18.

RAI BAHADUR SUKHRAJ RAI AND OTHERS.

[SIR MAURICE GWYER, C. J., SIR SHAH SULAIMAN
AND SIR SRINIVASA VARADACHARIAR, JJ.]

Government of India Act, 1935, s. 205—Certificate by High Court—Code of Civil Procedure, 1908 (Act No. V of 1908), O. XLV, r. 17—Application to High Court for admission of appeal to Federal Court before grant of certificate—Irregularity—Bihar Money-Lenders Act, 1938 (Bihar Act No. III of 1938), s. 12—Exercise of discretion for first time by Federal Court—Practice.

It is a rule which admits of no qualification that, when Counsel take on themselves the responsibility of making statement of fact to the Court, the Court is entitled to assume that those statements are true in every particular, so that it may implicitly rely on them.

APPEAL from the High Court at Patna.

This appeal arose out of a money suit filed by the respondents in the Court of the Additional Subordinate Judge, Bhagalpur, for the recovery of the sum of about Rs. 13,306 on the basis of a *roka*, dated September 20, 1932. This Subordinate Judge, acting upon the provisions of the Usurious Loans Act, 1918 (Act No. X of 1918), reduced the interest from 18 to 12 per cent. and passed a decree accordingly. The respondents, being dissatisfied with this decision, appealed to the High Court at Patna. The Patna High Court (Harries C. J. and Manohar Lal J.) allowing the appeal held that the respondents were entitled to get interest at 18 per cent. with yearly rests. The cross-objection by the appellant that only 6 per cent. should be allowed was dismissed. The appellant thereupon made, on May 11, 1939, an application to the High Court under O. XLV, of the Code of Civil Procedure, for the grant of a certificate under s. 205 of the Constitution Act, to appeal to the Federal Court and for the admission of the appeal by the High Court. The High Court

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granted the certificate under s. 205 of the Constitution Act on October 5, 1939, and admitted the appeal, on November 6, 1939, under O. XLV, r. 8, of the Code.

Rajeshwari Prasad (Raghubir Singh, A. C. S. Chari and A. H. Fakhruddin with him) for the appellant.

Kripa Narain (Radhe Mohan Lal with him) for the respondents.

The Judgment of the Court was delivered by

GWYER C. J.—This appeal must be dismissed. It appears that in the proceedings before the High Court the point which the counsel for the appellant now seeks to raise was never mentioned and it is not clear on what grounds the certificate under s. 205 of the Constitution Act was obtained from the High Court. The application made under O. XLV of the Civil Procedure Code to the High Court was quite irregular, because r. 17, which has been added to O. XLV by the Government of India (Adaptation of Indian Laws) Order, 1937, assumes that a certificate under s. 205 of the Constitution Act has already been given. No such certificate was in existence when the application was made. It may be that where a certificate had not been granted at the time the judgment was pronounced, the party interested might bring the matter to the notice of the Court by an application, but that will not be an application under O. XLV. We do not know what question of interpretation of the Constitution Act was in the opinion of the High Court involved in the case and the record throws no light upon the point.

Counsel for the appellant told us that the only point which he desired to argue was the application of s. 8 of the new Bihar Money-Lenders (Regulation of Transactions) Act, 1939⁽¹⁾. It is the first time in any court that the appellant has sought to make such a submission, either under s. 8 of the Act of 1939 or under the corresponding section of the earlier Bihar Money-Lenders Act, 1938⁽²⁾. In his petition of appeal he does not even refer to that section, but to different sections altogether. We were told that

(1) Bihar Act No. VII of 1939.

(2) Bihar Act No. III of 1938.

this was a printer's error, but we have seen a typescript copy of the petition, with references to those sections inserted in manuscript and initialled by the appellant's agent. We were asked to allow the petition to be amended, but in the circumstances we see no reason for allowing any amendment; and, even if we had done so, we should certainly have rejected a request that we should exercise for the first time a discretion which the High Court could have been, but was not, asked to exercise under s. 12 of the earlier Act, a section which, so far as we are aware, the High Court has not at any time held to be void, as it has held other sections of the same Act to be.

We have one other observation to make. Counsel for the appellant, in answer to questions put to him by the Court, made what purported to be statements of fact relating to matters arising out of the litigation, which on further enquiry were found to be no more than surmises or guesses on his part. When counsel take on themselves the responsibility of making statements of fact to the Court, the Court is entitled to assume that those statements are true in every particular, so that it may implicitly rely upon them. This is a rule which admits of no qualification. It is an honourable obligation of the Bar and of great value in the administration of justice; and we trust that we shall not have occasion to draw attention to it again.

The appeal is dismissed with costs.

Appeal dismissed.

Agent for Appellant : *G. Sahay.*

Agent for Respondents : *Tarachand Brijmohanlal.*

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