

APPEAL FROM ORIGINAL CIVIL.

*Before Sir Lawrence H. Jenkins, K.C.I.E., Chief Justice, and
Mr. Justice Woodroffe.*

PADMABATI DASÍ

v.

RASIK LAL DHAR.*

1909

Nov. 30;
Dec. 21.

*Affidavit—Practice—Grounds of belief—Civil Procedure Code (Act V of 1908),
Order XIX, rule 3—Jurisdiction—Rehearing.*

The provisions of Order XIX, rule 3 of the Code of Civil Procedure, must be strictly observed: every affidavit should clearly express how much is a statement of the deponent's knowledge and how much is a statement of his belief, and the grounds of belief must be stated with sufficient particularity.

The Court has inherent jurisdiction to rehear a matter before the order passed by the Court at a previous hearing has been perfected.

APPLICATION.

On the 4th September 1905, two Hindu ladies, Sreemati Padmabati Dasi and Sreemati Rajnandini Dasi, instituted a suit as heiresses of their deceased mother, Sreemati Annapurna Dasi, for the recovery of certain properties belonging to their mother, from their uncle, the defendant Rasik Lal Dhar. On the 21st May 1909, a decree was passed by Harington J. ordering the defendant to deliver up certain articles of furniture to the plaintiffs, and otherwise dismissing the suit with costs. This decree was filed on the 17th August 1909.

On the 18th August 1909 the plaintiffs filed a memorandum of appeal, and thereupon took certain steps in prosecution of the appeal. On the 15th November 1909 the appellants obtained an order from Harington J. allowing them three weeks' further time from date to file their paper-book, with liberty to apply for further extension of time to the Appeal Court, which would be in Session on the expiration of the three weeks.

The Court of Appeal commenced its Session on the 24th November 1909. On the 30th November 1909 Rasik Lal Dhar

* Application in appeal, from Original Civil, No. 40 of 1909.

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applied on petition to the Court of Appeal for an order that the appellants may be directed to furnish security for the costs incurred by the respondent in the Court of first instance and on appeal. It was alleged in the petition, *inter alia*, that the appellants were *puṛdanashin* ladies having no *stridhan* property of their own, that the respondent's costs in the Court of first instance amounted to Rs. 8,000, and that the appellants had been dilatory in their prosecution of the appeal, and were trying to delay the hearing thereof.

The allegations in the petition were verified by the respondent in the following terms : "I, Rasik Lal Dhar, the defendant-respondent above-named, solemnly affirm and say that what is stated in the foregoing petition is true to the best of my knowledge, information and belief."

There was an affidavit in reply made by one Kunja Lal Dey, the husband of Sreemati Padmabati Dasi, to the effect, *inter alia*, that he was conducting the suit on behalf of the appellants, that the appellants were possessed of *stridhan* properties of the value of Rs. 10,000 and Rs. 8,000 respectively, and that the appellants had done their best to expedite the hearing of the appeal.

Mr. C. C. Ghose, for the respondent.

Mr. H. D. Bose, for the appellants.

Their Lordships dismissed the application, observing as follows :—

JENKINS C.J. AND WOODROFFE J. We think in this case no sufficient ground is shown for an order for security. All we have on which to act is an allegation of the appellants' lack of means followed by a general averment that the statements are to the best of the deponent's knowledge, information and belief ; but what his information and belief are, or on what his belief is grounded, is in no way indicated. Order XIX, rule 3, however, declares that "affidavits shall be confined to such facts as the deponent is able of his own knowledge to prove, except on interlocutory applications, on which statements of

his belief may be admitted, provided that the grounds thereof are stated." That proviso is essential, but no attempt has been made to comply with its terms.

We desire to impress on those who propose to rely on affidavits that, in future, the provisions of Order XIX, rule 3, must be strictly observed, and every affidavit should clearly express how much is a statement of the deponent's knowledge and how much is a statement of his belief, and the grounds of belief must be stated with sufficient particularity to enable the Court to judge whether it would be safe to act on the deponent's belief.

The applicant must pay the costs of this application.

The three weeks' time allowed by Harington J. having expired on the 6th December 1909, the appellants applied to the Court of Appeal for further time to file their paper-book. It was opposed by the respondent, on the ground, *inter alia*, that there had been unnecessary delay in furnishing the necessary stamp. By an order dated the 7th December the Court refused the application in the following terms :—

JENKINS C.J. AND WOODROFFE J. In our opinion there has been a delay in excess of what can be reasonably accounted for, and in respect of two periods of time. Having regard to that and to all the circumstances, we are not prepared to extend the time further. We refuse the application for extension of time with costs.

Thereupon, the respondent gave the appellants notice of an application for the dismissal of the appeal for want of prosecution. The appellants, *contra*, gave the respondent notice of an application for the rehearing of their application for further extension of time. The order of the 7th December 1909 had not been drawn up. It was alleged by the appellants in their petition that the reason for the delay in obtaining the necessary stamps, which had not been explained to the Court of Appeal on the 6th December, had in fact been laid before Harington J. on the 15th November, and been accepted by him.

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The appellants' application was heard on the 21st December 1909.

Mr. Hill (with him *Mr. H. D. Bose*), for the appellants. The order of the 7th December has not been drawn up. The Court has power to rehear the application for extension of time. In this country there is no specific rule giving the Court jurisdiction to rehear a matter before the order is drawn up.

Mr. C. C. Ghose, for the respondent. This is, in effect, an appeal from your Lordships' order of the 7th December 1909.

[JENKINS C.J. I think we have the power and we will hear the application on its merits.]

After hearing the application their Lordships made the following order :—

JENKINS C.J. AND WOODROFFE J. We give you three weeks' time from to-day. You are to give security for the costs of the appeal to the extent of Rs. 2,500 to the satisfaction of the Registrar within one week from the re-opening of the Court after the Christmas vacation. Costs of the application to be costs in the appeal.

Application allowed

Attorneys for the appellants : *O. C. Ganguly & Co.*

Attorney for the respondent : *S. S. Banerji.*