

CALCUTTA HIGH COURT

Harendra Lal Roy Chowdhury

Vs

Hari Dasi Debi

(Brett and Sarf-Ud-Din, JJ.)

07.12.1909

JUDGMENT

Brett, J.

1. The present applicant, comes before us under Rule 7, Order 45 of the new Code and asks us to extend time provided by that Rule within which the security for the costs of the respondents should be put in. It appears that the judgment of the High Court from which the appeal to His Majesty in Council is preferred was passed on the 3rd March 1909, and the application for leave to appeal was filed on the 12th May 1909, and the certificate was granted on the 10th of August 1909.

2. The section provides that the costs must be deposited within six months from the date of the decree or within six weeks from the grant of the certificate. In this case six months from the date of the decree expired on the 3rd September 1909, and six weeks from the date of the grant of certificate on the 21st September 1909.

3. In support of his application the petitioner has filed a petition giving the reasons for the delay in putting in the security. In paragraph 7 of the petition it is stated that the petitioner is a man of means, and if was only for an accident that the security bond was not filed in time. In paragraph 8 it is stated that "they were under the impression that, as it has been for years before, the High Court would re-open a few days after the re-opening of the lower Court." The application, it must be observed, was not made till the 29th November 1909, though the Courts opened on the 15th November 1909, that is, fourteen days after the re-opening of the Court. In paragraph 9 of the petition it is stated that "none of the clerks having been present in Calcutta the bond was not filed on that day." These are the only grounds in support of the application.

4. The application for an extension of time is opposed by the respondent, and it is for us to say whether sufficient grounds have been made out for granting an extension of time. The learned Counsel for the respondent has drawn our attention to several cases on this point. In the case of *Roy Jutindra Nath Chowdhury v. Roy Prasanna Kumar Banerjee Bahadur*¹ the learned Judges

remarked that the Judicial Committee had laid down that this Court had power to extend the time for depositing the costs in Court, but that it ought not to do so without some cogent reason. The case of *Burjore v. Bhagana*² is also referred to. The next case referred to is one of the Madras Court reported in *Rangasayi v. Mahalakshamma*³ In that judgment it is laid down what reasons constitute cogent reasons for extending the time for filing the security. We think the reasons laid down are sound and that we should follow them in the present case.

5. We have, therefore, to consider in the present case whether the reasons which have been advanced can be regarded as cogent reasons. On the face of the decisions I have referred to it is difficult to say that they are, and that the reasons were such over which the applicant had no control, or that the delay was due to a mistake which the Court would consider not unreasonable or caused by negligence.

6. We are unable to hold, for the reasons given in the present case, that the reasons given in the application come within the definition of cogent reasons and, therefore, we are unable to hold that the reasons given are such as would justify us in extending the time for filing the security bond.

7. The learned pleader for the applicant has further contended that as the decree was not signed by the Judge till the 12th July 1909, therefore, the time for filing the application for leave to appeal would run from that date. We are unable to accept his suggestion that "the date of the decree" must be held to be the date on which it was signed, it must be the date of the judgment as provided by Rule 7, Order XIV. In the case of *The Owners of the Ship "Brenhilda" v. The British India Steam Navigation Co.*⁴ their Lordships held "that the words 'after the date of the decree' mean after the date when the decree is pronounced as the case may be and not the date when the decree is reduced to writing and signed."

8. We think, therefore, that the suggestion that the six months must run from the date on which the decree was signed cannot be accepted.

9. The result, therefore, is that the application must be refused, and it, therefore, follows that the application for leave to appeal must be dismissed with costs 5 gold mohurs.

Cases Referred.

111 C.W.N. 1104

210 C. 557 : 11 I.A. 7

314 M. 801

47 C. 547