

CALCUTTA HIGH COURT

Bimala Prosad Mukerji

Vs.

Lal Moni Devi

(B Newbould and Graham , JJ.)

19.06.1925

JUDGMENT

B Newbould , J.

1. The plaintiff filed a plaint in the Court of the Subordinate Judge of Alipur on the 2nd October 1920. After litigation up to the High Court it was decided that that Court had no jurisdiction to try the suit and the plaint was returned for presentation to the proper Court on the 31st October 1922. The plaintiff then filed it before the Subordinate Judge of Burdwan on the 14th November 1922. The question that arises in this Rule is "what Court-fee should be paid by the, plaintiff?" The lower appellate Court has held that he should pay Court-fees in accordance with the amended Court-fees Act, which came into force on the 1st April 1922, after deducting the Court fees already paid.

2. For the plaintiff, the petitioner before us, it is contended that the Court-fee originally paid is sufficient. On behalf of the opposite party, the defendant, who appeared in this Rule, it is contended that the plaintiff should pay the Court-fee under the amended Act without any deduction for the cancelled Court fee stamp on the plaint that was originally filed. We think that the learned Subordinate Judge is right in holding that the Court-fee payable is that payable under the new Act after crediting the plaintiff with the Court-fee originally paid. The question as to 'the plaintiff being entitled to be credited with the Court-fee paid has been decided by Full Benches of the Madras and Bombay High Courts. No case of this Court clearly in point has been pointed out to us, but our experience is that the practice in this province is the same as in the other provinces, and we think that the Rule laid down in those cases should be followed.

3. As to the Court-fee payable it is undisputed that the Court-fee should be payable under the law which was in force at the time when the suit was instituted.

4. The whole question in this Rule is: was the suit instituted when the plaint was filed in the Court which had no jurisdiction or when it was filed in the Court having jurisdiction?" On this

point the decision of a Division Bench of this Court in *Hedlot Khasia v. Karan Khasiani*¹ is an authority for holding that when the plaint which has been returned is presented in a Court of competent jurisdiction the suit must be taken to be instituted on the date of such presentation. On behalf of the petitioner reliance is placed on certain decisions of this Court reported in the Weekly Reporter which are discussed in the

¹[1911] Cri.L.J. 241

judgment of the Subordinate Judge. We agree with him in thinking that those cases turn on the question of limitation and merely apply the Rule which has since been made the law by the passing of Section 14 of the Limitation Act of 1877.

5. The result is that the Rule is discharged. The opposite party's application for a Rule directing an order to pay further Court-fees is rejected.

6. The parties will bear their own costs.

7. The petitioner will be allowed one month from this date to pay the deficit Court-fees.

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