

# CALCUTTA HIGH COURT

Amulya Chandra Bhaduri

Vs

Satish Chandra Giri

(Suhrawardy ,J.)

12.03.1931

## JUDGMENT

### **Suhrawardy, J.**

1. In this case the District Judge of Hooghly has submitted the records of a case brought by the complainant and recommended that action may be taken against the accused for contempt of Court. The complainant is the receiver to the Tarakeswar estate and was appointed as such by the District Judge of Hooghly. He made a petition to the District Judge supported by an affidavit complaining that the defendant in the suit in which the receiver had been appointed and others had interfered with him and obstructed him in the performance of his duties and had by organised methods induced the tenants of this estate to refuse to pay their rents to him. There are also other allegations of obstruction and interference contained in the petition.

2. At the hearing it was pointed out that the learned District Judge had no jurisdiction in contempts of this kind. The learned Judge therefore referred the matter to this Court apparently being under the impression that this was the procedure contemplated under Act 12 of 1926. This Act supplies the remedy for the absence of jurisdiction in contempts in mofussil Courts by providing that in such cases the High Courts established by Letters Patent shall have and exercise the same jurisdiction, powers and authority, in respect of contempts of Courts subordinate to them as they have in respect of contempts of themselves. The learned Judge does not seem to have observed that the section which gives that power, namely, Sub-section (1), Section (2), provides also that the power should be exercised in accordance with the same procedure and practice as in respect of contempts of the High Courts themselves. He ought therefore to have refused to deal with the application and left the petitioner to make his application direct to the High Court in the way provided by the section to which I have referred. In all such cases the application should be made by one of the litigants who is or alleges that he is damaged by the actions of the other party, who have interfered with the arrangements made by the receiver, and that application must be made to the High Court direct, supported by the necessary affidavits and asking that a rule shall be issued calling upon the other side to show cause why they should not be committed for contempt. The same procedure, with regard to notice, to personal service, and otherwise, must be followed as in applications in contempt to the High Court on the original side. We do not say that in no case should the application be made by the receiver himself or that in certain cases the Court might not take action of its own accord without any application either by

the receiver or by either of the parties to the litigation; such might be the case, if the receiver or the parties refused to apply, but in ordinary cases the necessity of any such procedure cannot arise because it is obvious that such interference with the receiver must always have the result of causing damages to one or other of the parties to the litigation, and it is in the interest of that party that he should make the application to the Court. In the present case the procedure has been mistaken.

3. The matter comes before this Bench because it has been specially referred to us by the Chief Justice, otherwise we could not have dealt with the application at all which in itself indicates that the procedure followed by the parties and the learned Judge is not contemplated by Act 12 of 1926. But this Bench has been appointed by the Chief Justice to deal with cases under Act 12 of 1926. This being the position we do not think it necessary to put the parties to farther expense by refusing to deal with this reference on the ground that it is not in order. We will treat the affidavit and the petition made to the District Judge as an application made to us by the receiver asking that a Rule may be issued calling upon the other party to show cause why they should not be committed for contempt. We have read the petition and the affidavit and we direct a Rule to issue calling upon the opposite parties Satis Chandra Giri, Probhat Giri, Narendra Samanta and Goberdhone Kamle to show cause why they should not be committed for contempt.

4. Let notices of this Rule be served upon the plaintiffs in the suit in which the receiver has been appointed by the District Judge.