

PER CURIAM :—The Court, concurring in the decision of the Calcutta High Court, reverses the decree of the lower court, and remands the case for the lower court to inquire and determine what sums have been expended by the defendant in the proper and necessary repairs of the mortgaged property, and to pass a new decree allowing the same to the defendant with interest thereon at the same rate as upon the mortgage money, viz., two per cent. per mensem. Costs to follow the final decision.

1868.
RA'GHO
BA'GAJI
v.
ANA'JI
MA'NA'JI
PA'TIL.

Civil Petition.

Aug. 13.

GANESH SADA'SHIV.....Petitioner.

Plaint—Date of Presentation of Plaint—District Court—Limitation.

Where a plaintiff presented a plaint to the District Court, the Munsif's Court, in which he ought to have presented it, being then temporarily closed, it was held that the date on which the plaint was presented to the District Judge should be considered as the date of presentation to the proper Court.

THIS was an application for the exercise of the extraordinary jurisdiction of the Court, under Reg. II. of 1827, Sec. 5, cl. 2.

The petitioner desired to file a plaint in the Court of the Munsif of Alibág. The period of limitation within which it was necessary for him to commence the suit was to expire on the 14th of March 1868. Previously to that day, however, the Munsif of Alibág, in the Konkan District, in whose court the suit should have been instituted, being absent on leave, his court was closed by order of the Judge. The petitioner thereupon presented the plaint, on the 13th of March 1868, to R. H. Pinhey, District Judge of Tháná, who made the following order :—

“I cannot receive this plaint. The applicant should not have postponed suing till only two or three days were left him to sue in.”

On a reference being made to the Acting Judge of Tháná, A. Bosanquet, he reported that during the Munsif's absence

*overruled
in
see S.A. No
435 of 18
decided
11th / 12 / 7
by C. J.
Parker*

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his court was not placed under the charge of any other Munsif for the purpose of receiving plaints.

PER CURIAM (NEWTON and TUCKER, JJ.):—The Court of the Munsif having been closed by order of the Judge, and the Judge of no other court having been put in charge of the said Alibág Court for the purpose of receiving such plaints as might be presented, the date of the presentation of the plaint to the District Judge by the applicant must be considered as the date of presentation to the proper court; and the District Judge's order is, therefore, reversed, and he is directed to receive the plaint, and forward it to the Alibág Court, which should treat it as presented to that court on the date on which it was first presented to the District Court.

District Judge's order reversed.

Aug. 19.

Special Appeal No. 304 of 1868.

SHEK ABA'S valad SHEK DA'UD *Appellant.*
 IBRA'HIMJI valad HASANJI *Respondent.*

Practice—Báttá Allowance—Notice—Act XXIII. of 1861, Sec. 5.

Where the Court of first instance ordered a co-defendant to be joined in the suit, but the plaintiff failed to pay the allowance necessary for the purpose of causing a notice to be served on such co-defendant, who accordingly did not appear at the hearing:—

Held that the proper course for the Court to have adopted was to dismiss the suit, under Sec. 5 of Act XXIII. of 1861.

Where the Court did not adopt that course, but proceeded with the suit, and passed a decree from which the original defendant appealed on the merits to the Assistant Judge, without taking the objection that the suit ought to have been dismissed, it was held that he could not raise this objection for the first time in special appeal.

Semle—The provisions contained in the first portion of Sec. 5 of Act XXIII. of 1861 are imperative.

THIS was a Special Appeal from the decision of J. R. Naylor, Acting Senior Assistant Judge at Ratnágirí, in Cross Appeals Nos. 502 and 519 of 1867, amending the decree of the Şadr Amín of Ratnágirí.