

Salil Dutta v. T.M. and MC (P) Ltd.
(1993)2SCC 185

B. P Jeevan Reddy, J

Background

- The appeal is preferred by the plaintiff against the judgment and order of a division bench of the Calcutta High court allowing the appeal preferred by the respondent/defendant. And the appeal before the High court was directed against an order of the city civil court, Calcutta dismissing an application filed by the defendant to set aside the ex parte decree passed against him, under Order 9 Rule 13 of the CPC
- The plaintiff/appellant filed a suit for ejecting the defendant-tenant on the ground of default in paying rent and on the ground that the such premises are required for his own use and occupation. The suit was posted for final hearing on 9/06/1988 -seven years after its institution.
- According to the defendanthis advocate advised him that he need not be present at the hearing of the suit on 9/06/1988, and thereafter till the applications filed by him under Order 14 Rule 5 and Order 6 Rule 16 Civil Procedure Code are disposed of. On 9/06/1988, the advocate for the defendant prayed for an adjournment till the next day. It was adjourned accordingly. On June 10, neither the advocate for the defendant nor the defendant appeared, with the result the defendant was set ex parte.

Key aspects

- Order IX Rule 13
- Whether principle of the decision in **Rafiq v. Munshilal** (AIR 1981 SC 1400) applies in the present case

Order IX Rule 13 and Rafiq v. Munshilal (AIR 1981 SC 1400)

- The defendant had acted on the basis of the advice given by the advocate-on-record of the defendant, there was sufficient cause to set aside the ex parte decree within the meaning of **Order 9 Rule 13 Civil Procedure Code**
- The trial court dismissed the said application against which an appeal was preferred to the Calcutta High Court. The appeal was heard and dismissed on July 8, 1991
- However, before the judgment was signed by the learned judges constituting the Division Bench, an application was moved by the defendant for alteration or modification and/or reconsideration of the said judgment mainly on the ground that the defendant's counsel could not bring to the notice of the Division Bench the decision of this Court in *Rafiq v. Munshilal*- **the decision that supports the Defendants case**
- The Division Bench reopened the appeal on the ground that “technicalities should not be allowed to stand in the way of doing justice to the parties”

Observations

- “..it is true that in certain situations, the court may, in the interest of justice, set aside a dismissal order or an ex parte decree notwithstanding the negligence and/or misdemeanour of the advocate where it finds that the client was an innocent litigant but there is no such absolute rule that a party can disown its advocate at any time and seek relief. No such absolute immunity can be recognised. Such an absolute rule would make the working of the system extremely difficult. The observations made in *Rafiq* must be understood in the facts and circumstances of that case and cannot be understood as an absolute proposition.

Held

- *“This was an on-going suit posted for final hearing after a lapse of seven years of its institution. The defendant not a rustic ignorant villager but a private limited company ...managed by educated businessmen who know where their interest lies.....they chose to non-cooperate with the court. Having adopted such a stand towards the court, the defendant has no right to ask its indulgence. Putting the entire blame upon the advocate and trying to make it out as if they were totally unaware of the nature or significance of the proceedings is a theory which cannot be accepted and ought not to have been accepted.”*
- “For the above reasons, the appeal is allowed “