

Hardit Singh Vs. Gurmukh Singh

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Court : Mumbai

Decided On : Nov-20-1919

Reported in : (1920)22BOMLR550

Judge : Shaw,; Phillimore, ;John Edge ;Amir Ali and ;Lawrence Jenkins, JJ.

Appellant : Hardit Singh

Respondent : Gurmukh Singh

Judgement :

1. The Chief Court admitted the appeal on February 13, 1915, but did not notify the respondents other than Gurmukh Singh of the admission. Such notification was required by Order XLV, Rule 8 (b). The Registrar of the Pan jab Chief Court has certified that the respondents other than Gurmukh Singh were not served with notice, and that this was due to oversight in his office. Gurmukh Singh has sworn that he did not inform the other respondents of the admission of the appeal, and all the other respondents have filed affidavits that they did not know of the admission, or of the despatch of the printed record to England. Had they known, they would have instructed agents to defend the appeal. Under these circumstances they are entitled to a rehearing : *Mussumat Ranee Sumo Moyee. v. Shooshee Mokhee Burmonia* Reference was made to Rule. 43 of the Rules of the Judicial Committee, 1908.

2. Dabe, for the opposite party appellants, submitted that the facts and circumstances of the case showed that all the respondents knew of the admission of the appeal. They all had knows ledge of the application under Order XIVV, Rule 3, and of the Chief Court's order dated October 14th 1914 certifying that the case-fulfilled the requirements of Section 110 of the Code of Civil Procedure. Further, they all bad notice of an application made by appellants for stay of execution pending the appeal to the Board, There was sufficient evidence to show that they all knew of the despatch of the record to England. Under Rule 43 of the-Board's rules it is not necessary that they should get notice of the admission of the appeal if they were, in fact, aware of it : it is clear that they were so aware.

3. Their Lordships rejected the application with costs.

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