

In Re: Kadhori and ors.

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Court : Allahabad

Decided On : Jul-08-1919

Reported in : (1920)ILR42All26

Judge : Walsh, J.

Appellant : In Re: Kadhori and ors.

Judgement :

Walsh, J.

1. In this case the Munsif of Etawah was holding his ordinary court on a certain Friday, the 2nd of May, 1919. It is alleged, and not denied, that he announced that miscellaneous cases only would be taken that day and the following day which was a Saturday. Certain minors/represented by their guardians were plaintiffs in a suit pending in the court. They were represented by a vakil and after waiting until 4:30 p. m. they left the Court. The ordinary sitting of the court is 10:30 a.m. to 4 p.m. and speaking from my limited experience of this country I should say that anybody who began a civil case after 4:30 p. m. in the month of May would be extremely foolish, and that the parties engaged would have a right to object. Next day, the plaintiffs' vakil discovered that the case had been dismissed for default. The Munsif has not condescended to explain what this means, why the case was called on and what the default was, for which it was dismissed. It is obvious on the facts before me, unless there is a great deal more behind it, that that is an

improper order which ought to be set aside. And if it came before me it would certainly be set aside in revision. It may be that there is some reason for it, but whether there be or whether there be not, the vakil finding what had happened, did what it was his obvious duty to do, indeed the minimum which he could do on behalf of his clients, he applied for restoration. All I know is that on that first application no order was made and a second application was put in asking for a day to be fixed for the new hearing. Here again I am left entirely in the dark so far as the Munsifs view of the case is concerned, because I do not know whether he refused to restore it, and if so why, or whether he has made any order, or was willing to make any order, restoring the case to his pending file. , But upon these applications he proceeded to pass an order which really is one of the most remarkable orders I have ever read. He treats the applications made to him to restore the suit to his list as having been utilised as a vehicle for criticising and threatening him and, having rightly remarked that if he, the Judge, had neglected his duty he must be dealt with elsewhere, he proceeded to stigmatize the remarks and so-called threats as 'contempt of court' and gave notice to the minors to show cause why they should not be committed for contempt of court in respect of an application which had clearly been made on their behalf by their vakil, and asked the vakil for an explanation. I am inclined to think that, whatever the contents of the application, the Munsif could not have made the order he did, but, except that an expression is used in the application which is somewhat cumbersome and forcible for describing the order dismissing that suit which was objected to, but which is not unusual or unfamiliar in style having regard to the language frequently used in pleadings in the mufassil, there is nothing in the application to which exception can possibly be taken. The expression to which I have referred is to the following effect, that the order which had been made the day before and which was objected to was ' against rules and against law.' I really do not know what the Munsif meant by what he said. It is one of the commonest grounds adopted in a memorandum of appeal objecting to a decree or an order to say that it is contrary to rule or that the decision is contrary to law, and the Codes in this country in more than one place speak of matters being contrary to some rule having the force of law, and how an application based upon the ground that the previous order of the court had been contrary to rule, or contrary to law, can be regarded as a threat or

as improper, I am at a loss to understand. People sitting to administer justice and to hear the complaints of contending parties and alleged grievances of all sorts and kinds which come into courts of law, and liable to have their own decisions challenged, and sometimes severely criticized, in the courts of appeal, must not be too thin-skinned. If the Munsif really thought that the vakil had said anything in the application beyond what the occasion demanded, the proper course was for him to deal with the application on the merits, and to communicate privately with the vakil as to any personal matter which he thought arose. As a matter of fact, I cannot see that there was anything personal in the application from first to last, and it is extremely unfortunate that the Munsifs should from time to time somewhat impetuously jump to the conclusion that some offence is meant where none is intended. The order is a perfectly childish one and must be quashed.

2. Under what jurisdiction precisely the Court has power to , quash it, is a matter which may be open to argument. I do not think it really matters, because it is an order which if brought before this Court, in any reasonable form, is bound to be set aside. It has been admitted as a criminal revision by a very experienced Judge of this Court, but there is a difficulty about that, inasmuch as the Munsif is not an inferior Criminal Court within the meaning of Section 435. It might be held to be a case decided by the Munsif from which there was no appeal within the meaning of Section 115 of the Code of Civil Procedure, being a decision of his upon the application made to him on the 3rd of May, so as to entitle this Court to interfere in civil revision. But the matter having been brought before the Court, it matters not how, I have not the slightest' doubt that this Court has power under Section 107 of the Government of India Act, if under no other section, to make the order which I make.