

intezar Ahmad and Another Vs. Jumman and Others

intezar Ahmad and Another Vs. Jumman and Others

SooperKanoon Citation : sooperkanoon.com/457528

Court : Allahabad

Decided On : Feb-15-1995

Reported in : AIR1995All439

Judge : D.S. Sinha, J.

Acts : [Code of Civil Procedure \(CPC\), 1908](#) - Sections 115 - Order 9, Rules 6, 7 and 13

Appeal No. : Civil Revn. No. 260 of 1989

Appellant : intezar Ahmad and Another

Respondent : Jumman and Others

Advocate for Def. : Rajeev Joshi, Adv.

Advocate for Pet/Ap. : R.K. Jain, Adv.

Judgement :

ORDER

1. Heard Sri Rajiv Joshi, learned counsel appearing for the defendant-applicants and Sri Pushkar Mehrotra, holding brief of Sri R. K. Jain, learned counsel appearing for the plaintiff-opposite parties.

2. In Original Suit No. 65 of 1982 between Jumman and others and Smt. Raisa Khatun and others, pending in the Court of II Additional Civil Judge, Moradabad,

the applicants figure as defendants Nos. 8 and 12. On 4th November, 1988, when the suit was called on for hearing, the defendant-applicants did not appear. The Court, therefore, ordered the suit to be heard ex parte under clause (a) of sub-rule (1) of R. 6 of O.9 of the Code of Civil Procedure, 1908, hereinafter called the Code.

3. Later on, two applications, one on behalf of the defendant-applicant No. 1 and the other on behalf of defendant-applicant No. 2, praying for recall of the order dated 4th November, 1988 directing the suit to proceed ex parte was made under R. 7 of O. 9 of the Code. The applications were supported by the two separate affidavits of a common pairo-kar, namely, Mohd. Rafiq Khan. The applications of the defendant-applicants have been rejected by the order dated 2nd December, 1988, impugned in the instant revision under S, 115 of the Code.

4. The Court below has disbelieved the cause for default in appearance on the date on which the suit was called on for hearing on the ground that there is apparent contradiction in the cause shown in the two affidavits filed by the same pairokar. In one affidavit the pairokar had pleaded that he was unable to prosecute the case as he was ill on account of cold, headache and fever. In the other affidavit the ailment pleaded was dysentery. Indisputably, there is apparent contradiction regarding the nature of illness pleaded by the pairokar. The Court below has rightly disbelieved the cause for default in appearance. Had the plea of ailment been found to be true that may have been good cause for recalling the order directing the suit to be heard ex parte and for allowing the defendant-applicants to be heard in answer to the suit as if they had appeared on the day fixed for their appearance. But in the instant case the cause itself has been disbelieved. Goodness of the cause for non-appearance envisaged in R. 7 of O. IX of the Code and truthfulness of the cause for non-appearance are not synonymous. They are quite distinct. Once the cause for default in appearance is found to be untrue it cannot be held to be good cause and the prayer for setting aside the order directing the suit to be heard ex parte cannot be allowed.

5. On the facts and circumstances of the case, and for the foregoing reasons, the Court is clearly of the opinion that the instant revision lacks merit. It is, therefore, dismissed.

6. Petition dismissed.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com