

Nasiruddin Husain Vs. Ashfaq Husain

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Court : Allahabad

Decided On : Jun-26-1918

Reported in : AIR1918All71; 46Ind.Cas.747

Judge : P.C. Banerji and ;Piggott, JJ.

Appellant : Nasiruddin Husain

Respondent : Ashfaq Husain

Judgement :

1. The facts of the case out of which this application arises are these. On the 3rd of March 1917 a plaint was filed in the Court of the Subordinate Judge of Meerut. The office reported that the plaintiff would attain majority on the 5th of March 1917 and that the suit had been instituted by a minor without a next friend. The Court ordered the plaint to be brought forward in the presence of the pleader for the plaintiff and fixed a date for that purpose. On the 15 of March 1917 an application was filed signed both by the pleader for the plaintiff and the plaintiff himself in which the plaintiff stated that he was not a minor on the date of the filing of the plaint, that in any case he had completed his age of twenty-one years and that he wished to proceed with the plaint. Thereupon the Court ordered the plaint to be registered and issued notice of the suit to the other side. An application was made on behalf of the defendants to have the plaint taken off the file on the ground that the suit had been instituted by a minor without a next friend. This application was granted and the Court ordered the plaint to be taken off the file. Against this order

the present application for revision has been brought. In our opinion there was an irregular presentation of the plaint on the 3rd of March 1917 and that the plaint was lying in the Court without its being registered from that date to the 15th of March. On the 15th of March the plaintiff elected to proceed with the plaint, and we must take it that there was a proper presentation of the plaint on that date. It was upon that application that the Court ordered it to be registered. This being so, we must hold that the plaint was properly presented on the 15th of March when the plaintiff was of full age, and, therefore, there was no justification for the order directing the plaint to be taken off the file. The Court in making that order refused to exercise the jurisdiction which was vested in it. We allow the application, set aside the order of the Court below and direct it to take back the plaint as instituted on the 15th of March 1917 and proceed to hear the suit according to law. Under the circumstances we direct that the parties do abide their own costs of the application.