

Shambhu Nath and anr. Vs. the Sectetary of State for India

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Court : Allahabad

Decided On : Dec-21-1909

Reported in : 5Ind.Cas.120

Judge : George Knox and ;Piggot, JJ.

Appellant : Shambhu Nath and anr.

Respondent : The Sectetary of State for India

Judgement :

1. The appellants now before us were appellants in an appeal pending in the Court of Samll Causes (sic) Cawnpore. Upon the appeal being called (sic) for hearing, no pleader was at the (sic) in Court prepared to argue the case for (sic) appellants. The Small Cause Court Judgment thereupon dismissed the appeal. The appellants then went to the Small Cause Court Judge and asked for an order restoring appeal for hearing under Order 41, Rule 19 of the Code of Civil Procedure, 1908. The Court refused to re-admit the appeal (sic) gave as reasons for refusal that it found that none of the applicants' pleaders were ready to proceed with the appeal, as no fee was paid to them. This appears to us from the record to be hardly an accurate representation of the state of the case. One of the applicants' pleaders namely Ram Sanehi Seth has filed a certificate duly signed by him stating that the full fee was paid to him on the 15th of July 1908, which was long before the date fixed for hearing the appeal. There is also an affidavit by the attorney for one of the applicants supporting the statements set out in the

certificate. This affidavit has not been traversed. Were it not that we feel some doubt whether the learned Judge did not misunderstand the statement made to him, we should not have re-admitted this appeal. It is the duty of the pleaders appointed by the parties to be present and to be ready to proceed with the appeal when it is called on for hearing. It is in no way the duty of the Court to send for the pleaders or to see whether they find it convenient or not to come to Court. At the same time we do not wish to interfere with the discretion if in any particular case it relaxed this rule. We, therefore, allow the appeal set aside the order of the Court below and grant an order readmitting the appeal provided that the appellants pay into Court the costs of the previous appeal within three weeks of this date. Such costs not to be the costs in the case.

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