

Jaisari Singh and ors. Vs. Jaisari Singh and ors.

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Court : Allahabad

Decided On : Nov-01-1912

Reported in : 17Ind.Cas.294

Judge : George Knox and ;Rafique, JJ.

Appellant : Jaisari Singh and ors.

Respondent : Jaisari Singh and ors.

Judgement :

1. Before we proceed to consider the points raised in this appeal, it is necessary to set out step by step the various stages through which the appeal has passed up to the present date. The petition of appeal was admitted on the 11th of November 1911 and an order was given to fix a date under Order XLI, Rule 11 of the Code of Civil Procedure. The petition came up on the 25th of November 1911 in pursuance of the last order and the order then passed was: 'Let the record be sent for at the appellants' expense.' The necessary fee for carrying out this order was not deposited till the 6th of December. The case was put up again on the 20th of January 1912 and the order passed on that date was: 'Let notice go' The notice was to the effect that the 7th of March was the date fixed for the hearing of the appeal. It is a custom in this Court to issue notices upon respondents only. So far as the appellants are concerned, information of the date is given to the learned Vakils, who represent them, by notices fixed upon a Notice Board in the centre of the Court building. The notices for the respondents left this Court on the 6th of

February. They went in due course by post to the District of Azamgarh and from there by means of a process-server to the respondents. The return made by the process-server to the Court at Azamgarh in the case of certain respondents, who happened also to be appellants, was to the effect that these men were imprisoned in the Azamgarh Jail. The Azamgarh Court returned the notices to this Court as insufficiently served. They reached this Court upon the 1st of March and on the 7th of March, the papers were put up with a report which runs as follows:

2. 'To-day is the date fixed for the hearing of this appeal. Notices issued to the respondents have been received duly served except those intended for respondents Nos. 1 and others (Jaisri Singh and others), which have been returned unserved with a report to the effect that they are imprisoned in the Azamgarh Jail.' This report was presumably noted by those who appeared for the appellants and on that report, they asked this Court for further time. The fact that Jaisri Singh was in Jail was thus prominently brought to the notice of the learned Vakil for the appellants on the 7th of March 1912. A period of one month was granted and it was pointed out that no further grace will be given unless the Court is satisfied that immediate action is taken and good cause is shown by affidavit. So far as we can see, there would have been no difficulty in the learned Vakil for the appellants having notice conveyed to the Azamgarh Jail that the Court demanded prompt action and getting from the clients the necessary information for having notices served. On the 10th of April, the file was again put up and attention called to the fact that up to that date no steps had been taken. The learned Judge of this Court, before whom the papers came, directed that the appeal should be put up in the ordinary course for hearing and it was so put up on the 1st of May. The case then stood out for a week, but nothing was done by the appellants until the 10th of May when they asked this Court to issue fresh notices and they supported their petition by an affidavit. The affidavit is noted as solemnly affirmed by Jaisri Singh. He sets out that he is a member of a joint Hindu family and the karta of the family, that he and the next senior member of the family were imprisoned on the 17th of February 1912 and were released on the 16th of March, that there was no other member acquainted with the facts of the case, and, in consequence, no information or necessary costs were supplied to the learned Vakil, that neither he nor his next senior, member had any information of the orders of this Court till a

letter was received from the office of the learned Vakil, dated the 11th of April 1912 and that this letter reached about the 3rd week of April 1912. A learned Judge of this Court, before whom this appeal came in the ordinary course, passed an order on the 7th of June 1912, referring the appeal for disposal to a Bench of two Judges and it is thus that the appeal has reached this Bench.

3. In his referring order, he points out that on the 27th of May 1912, the appellants presented an application, the gist of which was that by reason of the provisions of Order IX, Rule 5, Civil Procedure Code, the appellants were entitled as of right to apply for issue of fresh notices within any period up to one year from the 7th of March 1912, the date on which the notices originally issued were returned unserved. The learned Judge adds that he has little doubt personally that the provisions of Order IX, Rule 5, cannot be applied to appeals in the manner contended for. We agree with him. We would go further and add that Order IX, Rule 5 does not, as the appellants contend, give them a right of applying for a fresh summons at any time within a period of one year from the date of the return made to the Court by the serving officer. If we were to hold this, it would follow that every appeal could be held up at the pleasure of the appellant for a whole year. Order IX, Rule 5 is an order enabling Courts to pass an order of dismissal at the time and upon the conditions set out in the rule. There is not a word in the rule which gives a right to the appellants to do or to abstain from doing any thing. In reality, it has no application whatever to the circumstances of the present case.

4. The facts then briefly summed up are as follows:

5. The appellants instituted an appeal. Notice was duly conveyed to the learned Vakil who appears for them pointing out that the appeal will be heard on the 7th of March. It also came to the knowledge of the learned Vakil for the appellants in ample time that his clients were confined in the Azamgarh Jail and it was presumably on this knowledge that he asked for further grace within which to issue notices upon the respondents. The period of one month was granted to him and, so far as the record goes, there is nothing to show that either he or his clients took any steps of any kind within the period allotted. The case then falls within the four corners of Order XVII, Rule 3. It was necessary for the further progress of the

appeal that notices should be served on the respondents. Time was granted for this very purpose and as no action was taken within the time allotted, this Court determined to proceed with the appeal. As we have already said, there is absolutely nothing on the record which points to any action taken in pursuance of our order of the 7th of March 1912. The learned Vakil for the appellants tells us, and we have not the slightest reason for doubting his word, that he did send letters to his clients. We understand him to say that he sent letters to the village in which they ordinarily reside. Knowing that they were at the time imprisoned in the Azamgarh Jail, these letters ran considerable danger of being neglected. Anyhow, the letters appear to have been treated with neglect and we do not see any reason why we should not, as the law permits, proceed to decide the appeal.

6. As regards the appeal itself, the findings of fact are entirely against the appellants. The appeal fails and is dismissed.