

Budhu and ors. Vs. Dewan and ors.

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Court : Allahabad

Decided On : Feb-11-1915

Reported in : AIR1915All34; 28Ind.Cas.265

Judge : Henry Richard, C.J. and; P.C. Banerji, J.

Appellant : Budhu and ors.

Respondent : Dewan and ors.

Judgement :

Henry Richards, C.J.

1. The Facts connected with this appeal are fully reported See Dewan v. Buddhu 25 Ind. Cas. 30 : 12 A.L.J. 837. It appears that a suit was brought before the Additional Subordinate Judge claiming damages for malicious prosecution. The suit was decreed in part on the 2nd of December 1912. Copies of the decree and judgment were delivered to the defendant on the 10th of December. The defendant had up to the 3rd of January 1913 to appeal to the District Judge. No appeal was tiled until thirty-seven days after that date. An application was then made to admit the appeal though late. The appeal was admitted. The only facts that the learned District Judge had before him when admitting the appeal were set forth in an affidavit, in which it was stated that instructions had been given to Mr. Weston, a Barrister, together with a sum of Rs. 40 for the purpose of filing an appeal. No affidavit of Mr. Weston, was filed. No explanation was given why Mr.

Weston did not file the appeal. Nor was it even alleged that the non-filing of the appeal to the District Judge was due to Mr. Weston's negligence. Under these circumstances the learned Judge of this Court considered that the District Judge had not exercised a judicial discretion when allowing the appeal to be filed after time. I do not think that we would be justified in setting aside the decree of this Court. Even if the non-filing of the appeal were due to the neglect of Mr. Weston, the Court could hardly lay down a general rule that the neglect of the legal practitioner engaged is always to be deemed a sufficient reason for admitting an appeal, or application, after the time prescribed by law.

2. It is suggested that if that appeal is not admitted, the client, has no remedy because no suit lies against a Barrister for neglect. I do not, at all agree to this suggestion. I do not wish to be taken as expressing any opinion as to whether or not Mr. Weston was negligent. It may have been that he got some special instructions from his client as to the filing of the appeal. But in my opinion if it was shown that an Advocate who is a Barrister or other professional gentleman received and accepted instructions to file an appeal or make an application and the client lost his right to appeal or make the application as the result of the negligence of the Barrister or practitioner to file the appeal or application within time, such Barrister or Vakil would be liable to his client in a Court of Law.

3. I would dismiss the appeal.

Banerji, J.

4. I also am of opinion that the appeal should be dismissed. The learned Judge in the Court below did not subject the reason alleged for the delay of thirty-seven days in the filing of the appeal to such scrutiny as he was bound to do. He must, therefore, be taken not to have exercised a judicial discretion in admitting the appeal beyond time. On this ground alone I would hold that the learned Judge of this Court was justified in reversing the decision of the learned District Judge. I do not think it necessary to express any opinion on the other point touched upon by the learned Chief Justice in his judgment.

5. The order of the Court is that the appeal is dismissed with costs.

