

Har Narain Vs. Umrai

Har Narain Vs. Umrai

SooperKanoon Citation : sooperkanoon.com/473705

Court : Allahabad

Decided On : Nov-04-1912

Reported in : 17Ind.Cas.661

Judge : Henry Griffin, J.

Appellant : Har Narain

Respondent : Umrai

Judgement :

Henry Griffin, J.

1. A suit was dismissed under the provisions of Order IX, Rule 8, of the Code of Civil Procedure. An application under Order IX, Rule 9, to have the order of dismissal set aside was also dismissed. The plaintiff again applied under Order XLVII, Rule 1, for review of judgment, The Court of first instance allowed that application and setting aside its former orders directed that the suit be restored to its original number. The defendant appealed and the learned District Judge has reversed the order of the Court of first instance and directed that the application for review be dismissed. The plaintiff comes here in revision, and it is contended on his behalf that the Court below had no jurisdiction to hear the appeal from the Court of first instance except on the grounds set out in Order XLVII, Rule 7. That rule provides that an order rejecting an application for review of judgment shall not be appealable, but an order granting review shall be appealed against on grounds

specified in Clauses (a), (b) or (c) following. None of the reasons given by the Court below for allowing the appeal comes under Clauses (a), (b) or (c) or Rule 7. The provision of Rule 2 of Order XLVII does not apply. Rule 4 is also not applicable under the circumstances. The Court below gave as its reason for allowing the appeal that as the application for restoration had been dismissed, the plaintiff cannot come again and ask for a review of judgment. This is not one of the grounds upon which an appeal could be allowed under the provisions of Order XLVII, Rule 7. I allow this application, set aside the order of the Court below and restore the order of the Court of first instance. The costs of this application will be the costs in the case.

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