

H. Bevis and Co. Vs. Ram Prasad

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Court : Allahabad

Decided On : Jan-09-1922

Reported in : 66Ind.Cas.167

Judge : Piggott, J.

Appellant : H. Bevis and Co.

Respondent : Ram Prasad

Judgement :

1. This is an application in revision against an order of the Judge of the Court of Small Causes at Cawnpore rejecting an application to have a salt restored, which had been dismissed for nonappearance on the part of the plaintiff when the suit was allied on for heaving. The facts alleged by the plaintiff have not been controverted, either by affidavit of the opposite party, or by anything pissed on record by the presiding Judge himself. I am entitled, therefore, to assume that those facts are admitted. The suit in question was down for hearing on the 3rd of March 1921. The plaintiff was personally present in Court up to 5 p. m. At that hour the Court was still engaged in hearing some other suit. The plaintiff's Pleader came round to the Courtroom and some conversation took place between them, as a result of which both the plaintiff and his Pleader left the Court. The suit was subsequently called on. I gather from the record that the defendant was present, although the plaintiff was not, and, after recording the defendant's denial of the claim, the Court dismissed the suit. When the plaintiff applied for restoration,

setting forth the facts above stated, the Court passed an order the effect of which is that the plaintiff was to blame for leaving the Courtroom while he knew that the Court was still sitting, and on this ground alone the application for re-hearing was rejected. This Court has issued a rule binding on subordinate Courts which lays down that the ordinary hours for the attendance in the Court building of Judges presiding in Civil Courts for judicial work shall be from 10-10-30 a. m to 4 p. m. and these hours shall not be altered except under special sanction granted by the High Court. No doubt, it was never intended by this rule to fetter the discretion of subordinate Courts to an unreasonable extent. For a Court to sit after 4 p. m. for the purpose of concluding the hearing of a particular case, when the parties are agreed that their own convenience will be suited by the Court's doing so, would certainly not be regarded as a breach of this rule. In the present instance, however, the hearing of a fresh suit was commenced after 5 p. m. No reason has been stated for the adoption of this course, nor is it suggested that the learned Judge intimated in any way to the litigants present in Court that, for some special reason, he felt it incumbent upon him to sit to an unusually late hour on the day in question. The commencement of the hearing of a fresh suit after 5 p. m. was not only a contravention of the rule which has already been quoted, but it involved a practice which, if persisted in, would prevent the due observance of other rules and directions issued by this Court. Such, for instance as the directions contained in the orders of January 1921 regarding the precautions to be taken against the occurrence of fire in Court buildings. It has been suggested that, in any event, this is not a proper case for interference by this Court in revision, inasmuch as the learned Judge of the Court of Small Causes was within his jurisdiction in determining whether or not sufficient cause had been shown by the plaintiff for his absence when the suit was actually called on for hearing. The question, however, in my opinion, is very distinctly one for the consideration of this Court in the exercise of, the powers of superintendence given it by the Provincial Small Cause Courts Act. If proceedings such as those now before me are upheld by the Court, in the absence of any representation as to the existence of exceptional circumstances warranting the said procedure, the practical result will be that this Court must acquiesce in the open disregard of the very proper rules which it has issued for the purpose of regulating the business of subordinate Courts. Under the

circumstances of the case, this suit should, in my opinion, have been readmitted for hearing. I am even prepared to say that the learned Judge of the Court below did, in my opinion, act in the exercise of his jurisdiction with material irregularity where, without any previous warning to the public, and, as I must presume, in the absence of any exceptional circumstances which could be pleaded as warranting such a course, he called on this particular suit for hearing after the hour of 5 p. m.

2. I allow this application and, reversing the order of the Court below, direct that the suit in question be restored to the pending file of the Court of Small Causes at Cawnpore and set down for hearing according to law. The costs of this application will be costs in the cause.

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