

Abdul Majid Vs. Wahidullah

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Court : Allahabad

Decided On : Dec-03-1925

Reported in : AIR1926All284; 92Ind.Cas.496

Judge : Daniels, J.

Appellant : Abdul Majid

Respondent :

1. The plaintiff filed a suit against the defendant which was dismissed under Order IX, Rule 8, as on the date of,, hearing the defendant was present but the plaintiff was absent. An application was made under Order IX, Rule 9 to restore the case but was rejected. Against that order the plaintiff appealed to the District Judge. Both the original and the Appellate Court found that there was no sufficient cause for the plaintiff's absence on the date of hearing and that no case was made out for restoration. The learned Subordinate Judge who heard the appeal found, however, that the defendant in his pleadings had admitted the claim to the extent of Rs. 288. He, therefore, on the appeal before him passed a decree in favour of the plaintiff to the extent of Rs. 288.

2. The defendant in revision urges that the Appellate Court had no power to pass a decree in favour of the plaintiff on (sic) appeal from an order refusing to restore the suit. This plea is correct and must prevail. The powers of a Court to which an application for restoration is made are stated in Order IX, Rule 9. The Court may either dismiss the application if it finds that there was no sufficient cause for the

plaintiff's non-appearance, or it may allow the application and restore the suit on such terms as it sees fit. On an appeal from an order refusing to restore the suit the Appellate Court cannot make an order which the original Court could not legally have made. If the Appellate Court agrees with the Trial Court it will dismiss the appeal. If it differs from the Trial Court it will order the case to be restored either on terms or unconditionally. The plaintiff's remedy if he considered that his suit had been wrongly dismissed to the extent of Rs. 288 was to file an appeal against the decree dismissing his suit and such an appeal is permitted by Section 96 of the Code. As a matter of fact the Court below is wrong even in saying that the defendant admitted the claim to the extent of Rs. 288. The defendant pleaded payment to the extent of Rs. 110 and admitted a balance of Rs. 178 only. For the purpose of Order IX, Rule 8, it is the net, amount for which the defendant admits liability after deducting all payments alleged by him which has to be taken into account. The Court below has acted without jurisdiction in decreeing the plaintiff's claim to the extent of Rs. 288. I set aside its order and restore the order of the Munsif. The applicant will get his costs both in this Court and in the Court below.