

Ram Chander Vs. Tej Singh and ors.

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Court : Allahabad

Decided On : Jun-13-1929

Reported in : AIR1929All906

Appellant : Ram Chander

Respondent : Tej Singh and ors.

Judgement :

1. This is an application in revision from an order refusing to restore an application which was itself an application for setting aside an ex parte decree and had been dismissed for default. The learned Judge thought that no application for the restoration of such an application can lie, and the only remedy open to the applicant is to make a fresh application. Apparently his view seems to be that, if an application for setting aside an ex parte decree is dismissed for default, a fresh application for setting aside the ex parte decree should be filed, and no application to restore the application dismissed for default is competent. If this view were correct, the result would be that, if the application for setting aside an ex parte decree happens to be dismissed after the expiry of 30 days, the applicant would be left without any remedy, even though there may be a just cause for his non-appearance. For, it is quite clear that Section 5, Lim. Act, would not apply to such an application, as it has not been expressly made applicable to it. When an applicant applies that his application for setting aside the ex parte decree be restored, the question for consideration is whether there was good cause for his non-appearance at the time when the application was dismissed. That is a

question entirely separate and independent from the question whether there was good cause for his non-appearance on the date when the ex parte decree was passed. These two are entirely different dates, and involve different questions for consideration.

2. In our opinion, although Order 9 does not apply to such an application for restoration, the case falls under the inherent jurisdiction of the Court, as laid down in Section 151. Civil P.C. This was the view expressed in *Ganesh Prasad v. Bhagolo Ram* : AIR1925 All773 , which is directly in point. We, therefore, allow this revision and setting aside the order sand the application, dated 23rd July 1927, to the Court below for disposal according to law.

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