

Ram Nath Vs. Hub Nath and anr.

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SooperKanoon Citation : sooperkanoon.com/495876

Court : Allahabad

Decided On : Apr-24-1920

Reported in : (1920)ILR42All542

Judge : Grimwood Mears, C.J. and ;Piggott, J.

Appellant : Ram Nath

Respondent : Hub Nath and anr.

Judgement :

Grimwood Mears, C.J. and Piggott, J.

1. The question in these appeals is whether the certificates for the pleader's fees were tendered to the officer of the court within the time prescribed by the General Rules (Civil) of 1911 for Subordinate Courts.
2. The date fixed for the commencement of the hearing of the suit No. 62 of 1918 (Original Suit No. 70 of 1916) was the 24th of November, 1916.
3. On the 17th of November, an application was made that suit No. 103 of 1916 (afterwards First Appeal No. 362 of 1917) should be put up with No. 70 of 1916 and decided at the same time, as the two actions covered the same ground. No order was made on the 17th but the matter was ordered to be put up on the 24th of November, the day which had been fixed for the hearing. On that day an order was made that the two cases should be put up on the 2nd of January, 1917, and

the witness who were in attendance went away without giving evidence. On the 2nd of January, 1917, the cases were not reached and it was not until the 11th of April, 1917, that the hearing actually commenced.

4. On the 11th of April, and before the cases were opened the pleader for the appellants, tendered to the proper officer of the court certificates duly signed, certifying the amount of the fees actually paid to him together with the affidavits prescribed by Chapter XXI, Rule 1 V of the General Civil Rules.

5. The officer of the court declined to receive them on the ground that they ought to have been presented on the 24th of November, 1916, and in doing so relied on the 'explanation' of the word ' hearing ' appended to the section and what he believed to be the general practice of the subordinate courts. The lower court declined to include the pleader's fees in the decrees. The explanation specifically refers to Order XVIII, Rule 2 (1), and Order XLI, Rule 12, and states that 'hearing' is not to mean the day to which such hearing is adjourned.

6. In view of the 'explanation' it would seem that we are bound to hold that the certificate and affidavit must be tendered to the officer of the court on the day first fixed for the hearing, whether in fact on that day the case is reached or adjourned. The effect of the explanation in Chapter XXI, Rule 1 (1), is to leave in Order XVIII, Rule 2 (1), only the words 'on the day fixed for the hearing of the suit' and that day was the 24th of November, 1916. Order XLI, Rule 12, is not applicable, as that rule is confined to the hearing of appeals. As far, however, as this point is concerned the result would be the same, namely, that the certificate and affidavit must be delivered to the officer of the court on the day fixed for the hearing. Had we not been bound by the express words of the explanation, we should have thought it a more convenient course to prescribe that the certificate and affidavit should be tendered to the officer of the court at or before the commencement of the hearing of the suit that is to say, at or before the time when such suit is actually called on in order that it maybe opened and the matters in issue decided by evidence and argument. In view, however, of the explanation, we are of opinion that the court-below was right in not including the fees in the decrees and we therefore dismiss both appeals with costs.

