

(1922) 04 CAL CK 0032
In the Calcutta High Court

Aswini Kumar Dutt aud Ors.

APPELLANT

Vs

Sukhoda Sundari Debya

RESPONDENT

Date of Decision : 24-04-1922

Acts Referred:

Citation : AIR 1923 Cal 319 : 68 Ind. Cas. 448

Hon'ble Judges : Suhrawardy, J;Panton, J

Bench : Division Bench

Judgement

1. This Rule must be made absolute. The petitioner was the appellant in the Court below. The appeal was taken up by the Court on the 27th July 1921 for hearing when neither the petitioner nor his Pleader was found, nor was the respondent present. The Court, therefore, dismissed the appeal for default, On the 25th August the petitioner filed a petition for re-hearing of the appeal on the ground that he was unable to be present on the 27th July as he was ill and could not come to Court to instruct his Pleader. It appears, however, from the judgment of the learned Judge that the reason for non-appearance of the petitioner was that the 27th July was observed in that locality as a hartal. That may or may not be, but on the if 29th August both parties, the appellant and the respondent, filed an application before the learned Judge settling the dispute between them and asking that the case might be decided in terms of the petition of compromise filed. The petitioner's application for restoration was taken up on the 17th September when, one witness was examined for the plain iff. On the 24th September the Court passed the order complained of rejecting the plaintiff's application

2. We think in the circumstances of this case that the Court was wrong in not restoring the case, giving effect to the petition of compromise filed and in dismissing the application on the simple ground that the petitioner had not sufficient reason for not appearing on the 27th July. The order of the 24th September 1921 passed by the Court below will therefore, be set aside and the appeal restored. The learned Judge will proceed to, re-hear the appeal and give

effect to any compromise that may be legally entered into by the parties.