
(1929) 06 AHC CK 0039
In the Allahabad High Court

Bhagwan Prasad	Vs	APPELLANT
Madan Murari Lal and Others		RESPONDENT

Date of Decision : 14-06-1929

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 151

Citation : AIR 1929 All 811

Final Decision : Dismissed

Judgement

1. This is a defendant's application in revision from an order restoring a case. It is not necessary to consider the preliminary objection raised on behalf of the respondents as we are satisfied that on the merits this revision must fail. On the adjourned date of hearing, the senior vakil engaged did not turn up in time, and the junior vakil for the plaintiffs stated that his client had gone to fetch the senior vakil and he himself could not produce the evidence. The learned Subordinate Judge thought that this was a case of non-appearance on the part of the plaintiffs, and dismissed the suit under Order 9, Rule 8. That this was an error is now conceded by the advocate for the applicant. Under Order 17, Rule 2, as amended by this High Court no party is to be deemed to have failed to appear, if he is either present or is represented in Court by any pleader, though engaged only for the purpose of making applications. As the junior vakil was present in Court, there was no default in appearance, and the learned Judge should not have dismissed the suit for default of appearance.

2. When an application for restoration was made, the learned Judge rectified his mistake and restored the case. It is rightly contended before us that the Court below should not have proceeded under Order 9, as the provisions in that order were not applicable; but it cannot be doubted that the Court had jurisdiction to rectify its own mistake. Even under Order 47, the Court could have set aside its own order because there was a mistake and error apparent on the face of the record. The Court, however, has not proceeded under Order 47 but u/s 151, Civil P.C. If Order 47 did not apply, then the Court would certainly have inherent jurisdiction to restore the case if it thought that such restoration was necessary

for the ends of justice.

3. The Court below was satisfied that it was necessary for the ends of justice that it should intervene. We, therefore, should not interfere in this case. The application is accordingly dismissed. We direct that the parties should bear their own costs.