

(1917) 04 CAL CK 0039
In the Calcutta High Court

Dharanidhar Aditya and Others

APPELLANT

Vs

Hemanga Chandra Jana

RESPONDENT

Date of Decision : 25-04-1917

Acts Referred:

Citation : 41 Ind. Cas. 956

Hon'ble Judges : Walmsley, J; Asutosh Mookerjee, J

Bench : Division Bench

Judgement

1. We are invited in this Rule to consider the propriety of an order whereby the Court below has refused to revise a suit for arrears of rent and to try it in accordance with law. The suit was decreed ex parte on the 15th December 1914. The defendant in the suit was an infant represented by his mother as guardian ad litem. After the ex parte decree had been made, a suit was instituted on behalf of the infant by another guardian to set aside the ex parte decree on the ground that the infant was not properly represented and that the decree in fact had been obtained by fraud. This suit was decreed on the 30th June 1916 and the ex parte decree was set aside. On the 11th September 1916, the plaintiff applied to the Court to revive the original suit and to try it in accordance with law. The Court refused the application on the 20th November 1916. In support of this order, reliance has been placed upon the decision in Kshetra Mohan v. Man Gobinda Pal 6 Ind. Cas. 13 : 14 C. W. N. 558. It is not disputed, however, that this decision is contrary to the view taken by the Judicial Committee, in Khajooroonissa v. Rowshan Jehan 2 C. 184 : 3 I. A. 291 : 26 W. R. 36 : 1 Ind. Dec (N.S) 412 which was not brought to the notice of the Court. The Judicial Committee has ruled that when a consent decree was set aside, the result was to relegate the parties to the position they previously occupied, with the result that the suit which had terminated in the eon-sent decree had to be retried when the consent decree was vacated. The same course was followed by the this Court in the case of Raj Kumar Roy v. Hara Krishna Chakravarty 10 Ind. Cas. 355 : 15 C. L. J. 217 where it was pointed out that a similar view had been adopted by the House of Lords in Neale v. Gordon Lennox (1902) A. C. 465 : 71 L.J.K.B. 939 :

87 L. T. 841 : 51 W. R. 140 : 66 J. P. 757 : 18 T. L. R. 791; Bibee Soloman v. Abdool Azeez 6 C. 687 : 8 C. L. R. 169 : 3 Ind. Dec. (N.S) 446; Sharat Chunder Ghose v. Kartik Chunder Mitter 9 C. 810 : 12 C. L. R. 453 : 4 Ind. Dec. (N.S) 1188; Sarbesh Chandra Basu v. Hari Dayal Singh 5 Ind. Cas. 236 : 110. L. J. 346 : 14 C. W. N. 451; Chatterjee Brahmin v. Durgadutt Agarwalla 34 Ind. Cas. 394 : 23 C. L. J. 436 : 20 C. W. N. 943; Fateh Chand v. Narsingh Das 16 Ind. Cas. 988 : 22 C. L. J. 383. No doubt, in the present case, the suit terminated in an ex parte decree and not a consent decree. That, however, makes no difference in point of principle. The suit was terminated by an ex parte decree. That decree has been set aside by a Court of competent jurisdiction. The effect is that the decree whereby the suit was terminated stands cancelled, and the suit remains on the file of the Court as an undisposed of suit. In these circumstances, it is incumbent upon the Court to proceed with the trial of the suit. If the plaintiff does not wish to proceed with the trial of the suit, the Court must dismiss it. But if the plaintiff desires to proceed with the suit, it must be tried in accordance with law.

2. The result is that the Rule is made absolute and the order of the Court below discharged. The suit for rent will stand revived and will now be tried in accordance with law. The petitioner is entitled to the costs of this Rule. We assess the hearing fee at one gold mohur.