

(1896) 09 CAL CK 0005
In the Calcutta High Court

Fatimunnissa alias Kanez Fatima and Others

APPELLANT

Vs

Deoki Pershad and Others

RESPONDENT

Date of Decision : 04-09-1896

Acts Referred:

Citation : (1897) ILR (Cal) 350

Hon'ble Judges : W. Comer Petheram, C.J.;Trevelyan, J;O''Kinealy, J;Macpherson, J;Banerjee, J

Bench : Full Bench

Judgement

W. Comer Petheram, C.J. and O''Kinealy, Macpherson, Trevelyan and Banerjee, JJ. —In March 1894, a decree was given against one Fatimunnissa and others. She died and her heirs prosecuted an appeal in this Court. In April 1895 they were called upon to deposit Rs. 782 as costs for the preparation of the Paper-Book. The money was not paid, and after some delay the appeal was on the 29th July 1895 dismissed for want of prosecution under Rule 17 of the Rules for the preparation of Paper-Books in appeals from Original Decrees. An application was then made to a Divisional Bench of this Court on the 6th February 1896, and the Judges of that Bench, being of opinion that the decision and decree of the 29th July could only be set aside by review, referred, the case to a Full Bench, as they disagreed with the judgment of another Divisional Bench of this Court in Ramhari Sahu v. Madan Mohan Mitter ILR 23 Cal. 339.

2. Now, under the Code there are only two ways known to the law by which a judgment and decree of a Divisional Bench of this Court can be set aside in India. These two methods are described in Sections 558 and 623 of the Code.

3. The present case is clearly not one in which default was made in appearing at the hearing of the case, for the record shows that the pleaders on both sides were in attendance and heard. It seems to us, therefore, that the view expressed in the reference is correct, and that the case of Ramhari Sahu v. Madan Mohan Mitter ILR 23 Cal. 339 so far as it decides the contrary is wrongly decided.

4. The rule was discharged by the Division Bench on the 15th February 1897.