

(1928) 11 AHC CK 0025
In the Allahabad High Court

Goswami Krishna Kishore

APPELLANT

Vs

Goswami Banwari Lal and Others

RESPONDENT

Date of Decision : 07-11-1928

Acts Referred:

Citation : 113 Ind. Cas. 749

Hon'ble Judges : Dalal, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Dalal, J.—This is a case where rehearing ought to have been permitted. Issues in the one were referred to arbitration. While the arbitration was pending the trial Court ordered that if the award was not received back on a certain, date the arbitration would be seded and proceedings continued by As observed by a Bench of two Judges in Ganesh Prasad v. Damoderdas 16 Ind. Cas. 177 : 10 A.L.J. 23 this was an undesirable order. After superseding an award the parties should be given time and opportunity to present themselves in Court and to produce evidence. This was not done in this case. As soon as the arbitration was superseded the Court wanted to proceed with the case. The plaintiff was not present and the suit was promptly dismissed. He had engaged a Counsel but naturally in the absence of any witnesses the Counsel was not in a position to proceed with the case. When it was uncertain whether the suit would be tried on the date fixed for hearing or not it was too much to expect that the plaintiff would go to the expense of summoning his witnesses and having them ready. It is true that, as usually happens the plaintiff has told a lie and stated that he was ill on the date of hearing instead of explaining that he was not prepared to undergo expense which may very likely be wasted in having witnesses ready on a date when possibly there may be no hearing. Just as in criminal cases so in civil cases confession is caused and injustice done by parties firmly believing that only by telling lies redress could be had in Court.

2. I set aside the orders of the two subordinate Courts and direct the trial Court

to re-admit the suit at its original number and try it according to law.

3. Costs here and heretofore shall abide the result.