

(1897) 07 CAL CK 0032

In the Calcutta High Court

Case No : Appeal from Appellate Decree No. 1595 of 1896

Kailash Chunder Das and another

APPELLANT

Vs

Rama Nath Chaudhuri and another

RESPONDENT

Date of Decision : 05-07-1897

Acts Referred:

Citation : (1897) 07 CAL CK 0032

Final Decision : Allowed

Judgement

Stevens, J.—In this case the Appellants question the action of the learned Subordinate Judge, who, having decided in their absence an appeal in which they were Respondents, refused to re-admit the appeal to a rehearing under sec. 560, C. P. C. At the same time an appeal is preferred against that ex. parte decision itself. The question as regards the re admission of the appeal is whether the Respondents were prevented by sufficient cause from attending when the appeal was called on for hearing. Their case is that the reason of their absence was that they had received no intimation of the date of hearing of the appeal. They swore an affidavit to this effect. Their pleader's clerk was examined (I must say in a very cursory manner) by the learned Subordinate Judge and he swore that owing to his own illness he was compelled to go to his home and that the papers of the case were with him, and that he did not give information to them of the day fixed for hearing. The learned Subordinate Judge does not say that he disbelieved this story; but he says that there was not sufficient reason for, what he calls, review of judgment when the absence of the parties is due to their own negligence, it is only right that they should suffer for it. But I think that a case like the present, is one in which some indulgence might reasonably be shown, for, it is clear, that if the Appellants' story is true, they were in no way to blame for their absence on the date of the hearing.

2. This appeal is allowed. The appeal No. 149 of 1896 in which the present Appellants were Respondents will be reheard. Costs of this appeal will be costs in the case.