

(1924) 05 CAL CK 0025
In the Calcutta High Court

Krishna Charan Mondal

APPELLANT

Vs

Chinibasi Mondal and Others

RESPONDENT

Date of Decision : 19-05-1924

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 41 Rule 19

Citation : AIR 1925 Cal 269

Hon'ble Judges : Pearson, J;Graham, J

Bench : Division Bench

Judgement

1. This appeal relates to an order of the Second Additional District Judge of Dacca, passed on the 9th June, 1922. On that date it appears that the present appellant had an appeal and a cross-appeal pending in that Court and when the appeals were called on he was absent. The result was that the appeal was dismissed for default and the cross-appeal was decreed ex parte. On the same day an application was made to re-admit the appeal upon which the application was rejected summarily, the learned Judge noting at the time that he had gone to the length of sending a peon to the Bar library to find the pleader, but neither the pleader nor the client could be found. We think that in these cases the best course to adopt, and the shortest in the end, is to treat the application as miscellaneous matter and to give the applicant an opportunity to show that he was prevented by any sufficient cause from being pre sent when the appeal was called on so as to comply with the provisions of Order 41, Rule 19, Civil Procedure Code. In the present case no such opportunity has been given to the appellant. Under the circumstances the appeal must be allowed and the case sent back to the lower Appellate Court to entertain the application for re-admission of the appeal upon the merits and to dispose it of according to law.

2. We make no order as to costs.