
(1916) 12 AHC CK 0001
In the Allahabad High Court

Musammat Bismillah Begam

APPELLANT

Vs

Hira Lal and Others

RESPONDENT

Date of Decision : 15-12-1916

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 109(a)

Citation : AIR 1917 All 313(1) : 37 Ind. Cas. 832

Hon'ble Judges : Henry Richards, C.J;P.C. Banerji, J

Bench : Division Bench

Judgement

1. This application arises under the following circumstances, A suit Was brought on a mortgage. The defendants pleaded (inter alia) part payment of an amount below Rs. 10,000. The Court of first instance held that the part payment had not been proved. If it had been held otherwise the claim of the plaintiffs would have been reduced by a certain amount for principal and interest. The defendants preferred an appeal to the High Court. On the case being called on, the learned gentleman who appeared in the case stated that they had no instructions to proceed with the appeal and the same was accordingly dismissed on the 27th of January 1915. On the 25th of March 1916 Counsel, (not the same gentleman who had appeared on the previous occasion) applied for restoration under the provisions of Order XLI, Rule 19, of the Code. This application was grounded on an affidavit. The Bench which heard this application considered that no sufficient cause had been shown for the non-appearance of the appellant at the hearing, and accordingly summarily rejected the application without issuing notice to the other side. The order of the Court was dated the 29th of April 1916. The present application is one for leave to appeal to His Majesty in Council from this order rejecting the application for restoration. It is argued that an appeal lies as of right to His Majesty in Council under the provisions of Section 109 (a) or (b). Section 109 (a) provides for an appeal from any decree or final order passed "on appeal" by a High Court. It is quite clear that the order rejecting the application for restoration was not a decree or final order passed "on appeal." Clause (b) provides for an appeal from any decree or final order passed by a High Court in

exercise of original civil jurisdiction. It is equally clear that the order rejecting the application for restoration was not an order passed in the exercise of the "original civil jurisdiction" of this Court. If an appeal lay and it were necessary that we should certify that the case was "otherwise" a fit one for appeal to His Majesty in Council, we would be unable to give the necessary certificate. We reject the application with costs.