
(1921) 04 AHC CK 0034
In the Allahabad High Court

Musammat Godhni

APPELLANT

Vs

Shyam Lal and Others

RESPONDENT

Date of Decision : 18-04-1921

Acts Referred:

Citation : AIR 1921 All 264 : 63 Ind. Cas. 737

Hon'ble Judges : Walsh, J;Lindsay, J

Bench : Division Bench

Final Decision : Disposed Of

Judgement

Lindsay, J.—This is an appeal from an order of the District Judge of Azimgarh, refusing to restore an appeal which was decreed ex parte on the 4th of June 1920.

2. The appellant before as is Muiammat Godhni, who was defendant in a suit for restitution of conjugal rights.

3. The suit against her was dismissed in the Court of first instance on the ground that the plaintiff had failed to prove that Musammat Godhni was his wife. The plaintiff then appealed to the District Judge. We have referred to the order-sheet, which shows that in the first instance the 8th of April was fixed for the first hearing of the appeal. On that date Musammat Godhni entered an appearance by a Vatalatnama signed by two Pleaders on her behalf. So far as she was consented, therefore, she was ready to go en with the hearing of the appeal on the date in question.

4. It appears, however, that the learned Judge was unable to take up the case on that date on account of press of work. The result was that the hearing of the appeal was post poned sine die.

5. Sometime in May the Judge took up the record again and ordered the 8th of June to be fixed for the disposal of the appeal, and notice of this date was given to the Pleaders.

6. On the 8th of June when the case was called up for hearing, both these Pleaders appeared before the learned Judge and stated that their client had not given them any instructions and that they were consequently unable to argue her case. The result, therefore, was that the appeal was decreed ex parte. An application for restoration was made on behalf of the lady, in which it was represented that her failure to appear and instruct her Pleaders on the date fixed for hearing was the result of certain circumstances over which she had no control, It was stated that she had a special Attorney, Parsotam Das, whom she had engaged for the purpose of doing her business in Court, that at or about the time the case came up for hearing, Parsotam Das had trouble at home owing to the illness of two daughters, one of whom died at the end of May and the other a few weeks later in Jaw, It was also stated that this special Attorney had written to the Pleaders in order to find out what date had been fixed for the hearing of the appeal but and not succeeded getting an answer from them.

7. The applicant was able to prove that Parsotam Das had lost two daughters, one on the 30th of May and the other on the 23rd of June. The Judge, however, relied upon the case of Har Prasad v. Abdul Rahman A.W.N. (1905) 44 in which it was held that where notice of the date of hearing was given to one of the Pleaders, that was sufficient notice to the party.

8. Where the question of sufficient cause has to be considered, each case must be dealt with on its own facts and it is impossible to lay down any universal rule as to what constitutes sufficient cause in a matter of this kind. After hearing the learned Counsel in the case and on a perusal of the order sheet of the lower Appellate Court, we have come to the conclusion that this is a case in which the learned Judge of the Court below might fairly have held that the lady had shown sufficient cause for not defending the appeal on the date fixed for hearing, in our opinion the appeal should be allowed and we order accordingly. We set aside the order of the Court below and direct that the appeal be restored to its proper place on the file and dealt with according to law, Costs here and hitherto will abide the result.

Walsh, J.

9. I entirely agree, I only want to say a word about two authorities which have been mentioned. The case of Baji Lal v. Nawal Singh 39 Ind. Cas. 636 : 15 A.L.J. 413 : 39 A. 388 adopting and following the case of Har Prasad v. Abdul Rahman A.W.N. (1905) 44 the one relied on by the Learned Judge in the Court below, is in my opinion distinguishable upon the facts. I happen to have been a party to that decision and the ground on which the result was sought was the wilful misconduct of the party's agent, and we there declined to interfere. In any event whether we take the view that there was sufficient cause in this case or not, it seems to me clearly to come within the scope of the principle laid down by a such decision in the case of Lalta Prasad v. Ram Karan 14 Ind. Cas. 187 : 9 A.L.J. 666 : 34 A. 426.