

(1929) 02 AHC CK 0054
In the Allahabad High Court

Natho and Another

APPELLANT

Vs

Babu Ram

RESPONDENT

Date of Decision : 19-02-1929

Acts Referred:

Citation : AIR 1929 All 399 : (1929) ILR (All) 758

Final Decision : Disposed Of

Judgement

1. On 22nd July 1927, Nathu and Sarju were appellants in a case fixed to come on before the Subordinate Judge, Muzaffarnagar. Nathu and Sarju were both present and they had engaged a pleader, B. Mulchand. At the moment when the case was called on, B. Mulchand, in the ordinary course of his profession, was then arguing a case in the Munsif's Court near by. According to the affidavit of the appellants, Sarju went across to the Munsif's Court to call his pleader, and when the pleader returned after some 10 or 12 minutes the appeal had been struck off. An application to restore it was heard and disposed of adversely to Nathu and Sarju on 27th August 1927, and the Judge's order is as follows:

The appellants had gone to call their pleader when the appeal was called on for hearing on 22nd July 1927. It was their duty to attend in time or to engage a pleader who could attend in time. This view is supported by *Majid-un-nissa Bibi v. Ammessa* [1914] 24 I.C. 826.

2. We think the Judge has taken much too narrow a view of this matter. The Judge must have been satisfied that Nathu and Sarju were in fact in Court on the 22nd July. He must also have been satisfied that they had duly engaged a pleader. He must have been aware that it is the practice of pleaders to earn their livings in other Courts than his and that B. Mulchand was legitimately at the moment carrying on his profession in the adjacent Court of the Munsif. When the case was called on the Judge should have asked whether Nathu and Sarju were present, and if they were, whether they had engaged counsel. Had he done this, we have no doubt that he would have learnt that B. Mulchand was their counsel but was at that moment engaged before the Munsif. Under these conditions it

would have been the proper course to have stood the case over for a few minutes to enable B. Mulchand to attend. An application for restoration was in fact drafted on the afternoon of the very day, the 22nd July, but there is nothing on the documents before us which indicate whether B. Mulchand made any oral application to the Judge. We are of opinion that he should have done so, and that immediately on returning from the Munsif's Court he should have told the Judge what had happened and asked the Judge to restore the case to his list and proceed with it. Had that application been made we conceive that it would have been the duty of the Judge to have at once restored the case to the list and heard it on that day, if possible. Whilst Courts of law have a right to insist that parties and their pleaders shall be ready when the case is called on, allowance must at times be made for an inevitable happening such as this and some indulgence shown in order that the parties may have their cases decided on the merits. We therefore set aside the order of Pandit Raj Rajeshwari Sahai and order that the appeal be restored to the Court of the Subordinate Judge of Muzaffarnagar and be heard and disposed of according to law.