

(1913) 02 BOM CK 0012
In the Bombay High Court
Case No : O.C.J. Appeal No. 69 of 1912

Nursey Virji

APPELLANT

Vs

Alfred H. Harrison

RESPONDENT

Date of Decision : 06-02-1913

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 41 Rule 11

Citation : (1913) 15 BOMLR 781

Hon'ble Judges : Chandavarkar, J; Basil Scott, J

Bench : Division Bench

Judgement

Basil Scott, Kt., C.J.—This is an application by certain respondents to have the appeal, filed by the appellant, dismissed for want of prosecution on the ground that he has not complied with Rule 739 in filing two copies of the paper-book in the Prothonotary's-office two days before the day fixed for the hearing. There is no doubt that the appellant is in default in this matter, but the book is now ready and the only omissions in it are said to be of certain documents, which are on the records of the Court of the nature of written statement, orders and decrees, which can be referred to without any difficulty in the Court if necessary. We, there more, think that it would be too harsh an order to make to dismiss the appeal, and that the justice of the case will be satisfied by ordering the appellant to pay the costs of the motion.

2. The other question relates to the position of the cross-objecting respondent. It appears that the cross-objection is not directed against the appellant at all but against the co-respondent and involves a question of fraud. The ordinary rule, which has been laid down both in Calcutta and Allahabad, is that cross-objections provided for by Section 561 of the Code of 1882 and by Order XLI, Rule 22, of the present Code, are cross-objections which are aimed against an appellant from a decree of the lower Court and are not cross-objections against a co-respondent. There are, no doubt, exceptional cases in which the rule might be relaxed so as to allow a cross-objection by a respondent against a co-

respondent; but we do not think that this is such a case. There is no reason shown, upon the facts stated before us, why the respondent, who has filed cross-objections, should not have preferred them by way of appeal. He has not filed any appeal and consequently no paper-book, and he has not, even under an arrangement which was made with the appellant's attorneys that he should file a separate paper-book embodying the materials upon which his cross-objections depended, tiled any such book in time. We do not think that he is entitled to any indulgence in the matter, and the appeal must proceed on the paper-book already filed.