

(1923) 05 AHC CK 0019

In the Allahabad High Court

Case No : F. A. No. 81 of 1921 (connected with F. A. F. O. 89 of 1921)

(Rai Saheb) Krishna Dass

APPELLANT

Vs

Ram Ugrah Singh and others

RESPONDENT

Date of Decision : 02-05-1923

Acts Referred:

Citation : (1923) 05 AHC CK 0019

Final Decision : Dismissed

Judgement

1. This is an unfortunate case but after hearing both parties we find ourselves altogether dissatisfied with the procedure adopted by the Court below. The suit was one for specific performance of a contract and the pleadings are sufficient to show that the parties were at issue, not so much on the question whether there had or had not been a contract between them, but as to the terms of the said contract. There were several important matters on which the defendant was contradicting the plaintiffs, as to the terms of the contract of lease which the plaintiff was seeking to set up and to enforce. It appears that there was considerable delay, about the hearing of the suit and that adjournments were granted in the month of June, 1920, in the month of July, 1920, and again on the 8th of August, 1920, by reason of the alleged illness of the defendant. The applications for adjournment made on behalf of the defendant were supported in each case by a medical certificate, but the judgment on which the decree under appeal is based and out of which the order, challenged in the connected First Appeal from order No. 89 of 1921, also arises, shows that the trial Court entertained a definite suspicion as to the genuineness of these medical certificates. We desire to say distinctly, for the guidance of Subordinate Courts in these matters, that if a Court sees good reason to distrust a medical certificate, presented on behalf of a party, its proper course is to summon the doctor, or medical officer who has given the medical certificate, and to insist upon his attendance. It is not fair to penalise a party on mere suspicion engendered in the mind of the Court by the fact that a number of certificates have been tendered in support of successive applications for adjournment. After all, in the present case

we can only infer from the record that the defendant was too ill to undertake a journey to Mirzapur, for personal appearance in Court, for a period which extended to something under two months. An illness of that duration is not in itself an extraordinary circumstance. At any rate, if the learned Subordinate Judge felt any suspicions on that ground, he ought on the 8th of August, 1920, to have summoned the officer who had signed the medical certificate. Instead of this he gave the defendant an adjournment and fixed the 10th of September, 1920, for the final disposal of the suit. For aught that appears on the record the defendant, as well as the plaintiffs, may have been perfectly ready with evidence, and prepared to do everything necessary for a final and satisfactory disposal of the suit on that date. It so happened, however, that the Court found its hands full of other work on the 10th of September, 1920 and on this ground alone and not at the request of either party, adjourned the hearing to the 24th of November, 1920. On that day the plaintiffs were present and represented by Counsel and were in a position to produce witnesses. The defendant was absent and no witnesses were in attendance on his behalf. The Counsel who represented him asked the Court for an adjournment and this application was refused. From the record it appears to us that the Counsel concerned thereupon retired from the case and, whether or not they remained physically present in Court, they took no further part in the proceedings and did not continue to represent or to act for the absent defendant. They certainly did not cross-examine the two witnesses whom the plaintiffs produced. On this state of facts we think the duty of the trial Court was to treat the defendant as not merely absent in person, but as both absent and unrepresented that is to say as entering no appearance in the suit from the moment that the application for adjournment made on his behalf by Counsel was refused. At the same time we are bound to admit that this was not the position which the trial Court elected to take up. It proceeded to hear the plaintiffs' evidence and to deliver a judgment, in which findings in favour of the plaintiffs are recorded on the two issues set down for determination. In the decree which* followed upon this judgment it is recorded that the suit came on for hearing in the presence of certain Counsel appearing for the plaintiffs and two Counsels appearing for the defendant. For reasons already stated we are of opinion that this is an inaccurate statement, which ought not to have appeared in the decree at any rate in the unqualified form in which it is there set down. Our technical objection to the proceedings in the Court below is that the decree as passed does not purport to be an ex parte decree, whereas in our opinion on the facts before the Court the decree passed should have been an ex parte one and should have been described as such. The defendant came before the Court on the following day, namely, the 25th of November, 1920, when he put in an application, supported by affidavit, in which he asked the Court to treat the decree passed on the previous day as an ex parte decree, and to set it aside on the ground that the defendant had been prevented by sufficient cause from entering an appearance on that day. The sufficient cause alleged was that there had been a confusion between the Courts in the neighbouring districts as to the proper date for the observance of a certain Muhammadan holiday, which might

have fallen either on the 23rd of November, or on the 24th of November, 1920, according to the date on which the New Moon became visible. The affidavit put in on behalf of the defendant has not been contradicted and as a matter of fact we know that the holiday in question was observed on different dates in different districts in the year 1920. However the Court which entertained this application decided that the decree of the 24th of November, 1920, was not an ex parte decree and could not be dealt with as such. The defendant has, therefore, as a matter of precaution, presented two appeals in this Court. First Appeal No. 81 of 1921 is a regular first appeal against the decree, treated as a regular decree, passed not merely after contest, but in the presence of both parties. First Appeal from order No. 89 of 1921 is an appeal against the order refusing to treat the aforesaid decree as an ex parte decree and to set it aside as such. We have come to the conclusion, first, that the decree actually passed was not an ex parte decree; and that the First Appeal from order must therefore fail. Secondly, we are of opinion that the trial Court ought to have passed an ex parte decree and that the course which it actually adopted was not fair to the defendant, and was calculated to put him in a difficulty in the event of his being in a position to offer some really good and sufficient explanation for his failure to enter an appearance on the 24th of November, 1920. We are prepared under the circumstances to allow the regular First Appeal, substantially on this ground. We set aside the decree on the ground that the Court ought to have dealt with the defendant as absent and unrepresented, from the moment when it rejected the application for an adjournment made on his behalf. We are of opinion also that the defendant has shown prima facie sufficient cause why he should have been allowed further indulgence and an opportunity of being heard in the case, and of having the questions in issue determined after a regular contest, and not merely upon the production of such evidence as a plaintiff ordinarily tenders in an ex parte proceeding. On these grounds we allow the Appeal No. 81 of 1921, set aside the decree in question and remand the case to the trial Court, to be re-admitted to the file of pending suits and dealt with accordingly. The costs of this appeal, which will include fees on the higher scale, will be costs in the cause to be dealt with by the trial Court in its discretion when it comes to pass its final order in the case. We dismiss the First Appeal from order, without any order as to costs.