
(1975) 03 AHC CK 0016

In the Allahabad High Court

Case No : Civil Miscellaneous Appeal No. 6 of 1975 in Second Appeal No. 748 of 1971

Raja Ram Dayalu

APPELLANT

Vs

Vimla Rani and others

RESPONDENT

Date of Decision : 04-03-1975

Acts Referred:

Allahabad High Court Rules, 1952 — Chapter 12 Rule 4

Citation : (1975) 03 AHC CK 0016

Hon'ble Judges : M.P.Mehrotra, J

Final Decision : Dismissed

Judgement

Mehrotra, J.

This application prays for the setting aside of the order dated December 16, 1974 whereby the appeal was dismissed under Chapter XII, Rule 4 of the Rules of Court against some of the respondents for the failure of the appellant to take the necessary steps to serve the said respondents. Shri B. N. Srivastava, learned counsel for the appellant, has moved this application on the ground that his son got burnt at about 9.00 a.m. on December 16, 1974. Hence, he could not attend the Court and the appeal which was listed under Chapter XII, Rule 4 was in consequence dismissed against some of the respondents under the said provision. An affidavit in support of the application has also been filed. It is not necessary to go into the sufficiency or otherwise of the cause shown as, in my opinion, the Court has no power to set aside an order passed under Chapter XII, Rule 4 of the Rules of Court. This rule lays down as under:

"If the requisite processfee or cost of issuing notice is not paid or the requisite notices are not supplied within the time prescribed in Rule 3 the case shall be listed for dismissal and shall be dismissed as against the persons who have not been served on account of the default unless on the case being called an application signed by the party or his Advocate or briefholder together with the requisite processfee, cost or notices, as the case may be, is represented to the

Court or an application similarly signed discharging from the case the persons not served on account of the said default or withdrawing it as against them and the Court deems fit to grant time."

Now, it is obvious that it is an imperative provision and leave no discretion in the Court to grant time to the appellant to take steps. When the case is listed under Chapter XII, Rule 4 the Court is bound to dismiss the same unless an application of the type mentioned in the said Rule is presented when the case is called up. When this is the position, in my opinion, setting aside the order under Chapter XII, Rule 4 and restoring the appeal will mean that what cannot be directly done by the Court can be indirectly done by it. In other words, even though the Court cannot grant time for taking steps when the case is listed under Chapter XII, Rule 4 it can grant such time to the appellant indirectly by first dismissing the appeal under the said provision and thereafter restoring the same on a subsequent application. In my opinion, the phraseology of Rule 4 militates against such an interpretation. In this view of the matter, I hold that this application is not maintained and it is accordingly rejected.