

(1915) 05 AHC CK 0011
In the Allahabad High Court

Ram Karan

APPELLANT

Vs

Madhukar Prasad

RESPONDENT

Date of Decision : 01-05-1915

Acts Referred:

Citation : AIR 1915 All 327 : 29 Ind. Cas. 469

Hon'ble Judges : Tudball, J;Rafique, J

Bench : Division Bench

Judgement

1. This is a petition for leave to appeal to His Majesty in Council. The appeal to this Court was valued by the appellant at Rs. 200. It was from an order of the District Judge removing him from his post as trustee of certain trust property. The trust property is said to have an annual income of over Rs. 2,300. It is, therefore, clear that the decree or final order involves, directly or indirectly, some claim or question to or respecting property of the value of Rs. 10,000 and over. But there are two other points for decision. The first one is whether the decree against which the applicant seeks to appeal does or does not affirm the decision of the Court below. The appeal to this Court was dismissed for default of prosecution and costs were awarded to the opposite party. A very similar question arose in Beni Rai v. Ram Lakhan Rai 20 A. 367 : (1898) A.W.N. 77.

2. In that case it was held that the decree of this Court dismissing an appeal for want of prosecution was a decree affirming the decision of the Court below within the meaning of Section 596 of the Code of Civil Procedure. The language of the rules in the present CPC corresponding to Section 596 has not been altered. The result of the order dismissing the appeal for default is practically an affirmance of the decision of the Court below. In this case, therefore, we have to see, whether the appeal which the applicant wishes to prosecute involves some substantial question of law. Six grounds of appeal are entered in the application. The first ground is the only one which relates to the order of this Court dismissing the appeal for default. That raises no question of law whatsoever. The remaining five all relate to questions which arose between the parties on the merits in the Court

below. They do not relate to our order of dismissal for default, from which this application has arisen. Of these five grounds, only ground No. 4 has been indicated to us as involving any question of law. The question involved depends upon the findings of fact arrived at by the Court below and affirmed by our order of dismissal. These facts being against the appellant, we can see no substantial question of law which arises for decision.

3. In our opinion the applicant is not entitled to the certificate which he seeks. This application is rejected with costs.