

(1925) 06 PAT CK 0024
In the Patna High Court

Sanahi Ram-Kandhaya Lal

APPELLANT

Vs

Gulab Chand-Kalu Ram and Another

RESPONDENT

Date of Decision : 24-06-1925

Acts Referred:

Citation : 89 Ind. Cas. 614

Hon'ble Judges : John Bucknill, J

Bench : Single Bench

Judgement

John Bucknill, J.—This was an application in civil revisional jurisdiction. It is made under the following circumstances.

2. The applicant was the plaintiff in a suit which he brought against the defendant and his firm to re-cover the value of goods which the plaintiff had sold and delivered to the defendants from time to time. I do not know exactly what was the amount for which the suit was brought, but it was brought in the First Court of the Subordinate Judge of Patna acting as a Small Cause Court Judge. The defendant put in a long written statement in his defence and in it he, after criticising the plaintiff's claim to some extent, admitted that he owed to the plaintiff, and was ready to pay him, the sum of Rs. 130-06. The case was proceeding in the usual manner; it was apparently fixed for hearing on the 1st of August of last year. When, however, it came up for hearing the plaintiff was not present and no reason appears to have been given why he was not. It is urged, however, that it is perfectly clear that the plaintiff ever since the institution of the suit had, on all days up to this date when the case was down for being proceeded with, attended with witnesses; however, unfortunately, on this day he was not in fact present and his Pleader was apparently unable to attend on his behalf, he was engaged in another matter. The defendant's Pleader was, however, present. The Subordinate Judge thereupon dismissed the suit in to in default.

3. At any rate this action of the Subordinate Judge appears to have been irregular because as the defendant had admitted that a portion of the claim was

due the Subordinate Judge should have passed a decree in favour of the plaintiff for the amount admitted to be due. This, however, he did not do. The order" of the Subordinate Judge of the 1st of August 1924 must in any case be set aside.

4. There remains the question of whether under the circumstances it is desirable that the whole matter should be now gone into. On the whole, I think that it should be gone into. The matter has to go back as I am not satisfied quite as to why the plaintiff was absent on the day when the case was finally called upon or why his Pleader could not attend. It is said that both the applicant and his Pleader were regular in attendance up to this date and that by mistake or accident the former was not and the latter could not be present. Under these circumstances I think that the proper order in this case is to set aside" the order of the Subordinate Judge sitting as a Small Cause Court Judge made on the 1st of August last and to direct that he should now in due course restore the case and hear it. There will be no order as to costs.