

(1914) 05 CAL CK 0024
In the Calcutta High Court

Srimati Majidunnessa Bibi

APPELLANT

Vs

Srimati Amnessa alias Aslahanessa Bibi

RESPONDENT

Date of Decision : 11-05-1914

Acts Referred:

Citation : AIR 1914 Cal 768 : 24 Ind. Cas. 826

Hon'ble Judges : Richardson, J;Fletcher, J

Bench : Division Bench

Judgement

Fletcher, J.—This is an appeal from an order of the learned District Judge of Burdwan refusing to restore an appeal which had been dismissed for default. The decree in the Court of first instance was an ex parte decree. Against that decree, the defendant preferred an appeal to the learned District Judge. When the appeal came on for hearing according to the order of the learned District Judge, the Pleader engaged in the case having been sent for did not appear, although the learned Judge had his name called out six times. It seems to me from that statement in the judgment that the learned Judge gave the Pleader ample warning to come forward and argue the case for the appellant. It is said that this gentleman, that is, the Pleader engaged was a gentleman of considerable practice in the local Courts and that his services were not only required before the learned District Judge but also in the two other Courts there. If that is so and if the appellant engaged the services of so popular a member of the local Bar, she ought also, although the said Pleader was acting for her, to have engaged another gentleman who was not so busy and who could attend the Court when the case was actually called on. Of course, neither the District Judge nor any other Judge is going to regulate the work in his Court according to the convenience of any particular member of the Bar. I see no reason why the learned Judge should not have gone on with the case after this gentleman had been sent for and his name called out six times outside the Court.

2. It is then said that the appeal having been dismissed, the appellant had sufficient cause to have the case restored. I do not agree that that is sufficient

cause. There is nothing to suggest that in Burdwan there is not a large enough member of Pleaders to fulfil all the wants of the public and because a litigant wanted a particular Pleader to argue his case and because the gentleman engaged in the case was engaged in another Court and could not come and so the case was heard ex parte, it cannot be said that there is a sufficient cause for restoring the case. It is the duty of the parties to engage Pleaders who can come in proper time and it is quite impossible for a Court to arrange its business in such a way for the benefit of a particular Pleader. Of course, the usual good feeling prevailing between the Bench and the Bar leads the Bench whenever possible to make such concessions as to postponing the hearing of a case in order to enable the Pleader to come and argue it, but for a client to set up an absolute right is quite a different thing. There is no absolute right and, so far as I know, there will be no absolute right and so long as there is no right there is no sufficient cause. In my opinion the learned District Judge exercised his discretion wisely in refusing to grant the application for the restoration of the appeal. The appeal is accordingly dismissed with costs.

Richardson, J.

3. I agree.