

**(1920) 12 AHC CK 0019****Allahabad High Court****Case No:** None

Mathura Prasad

APPELLANT

Vs

Bhup Narain and Another

RESPONDENT

**Date of Decision:** Dec. 21, 1920**Citation:** AIR 1921 All 52 : (1921) ILR (All) 411**Hon'ble Judges:** Walsh, J; Piggott, J**Bench:** Division Bench**Final Decision:** Disposed Of**Judgement**

Piggott and Walsh, JJ.

We think that this appeal must be allowed, having regard to the new rules which were drawn up by the Rules Committee of this Court and which were gazetted on the 1st of June, 1918. The service in this case was rightly made. It is no longer necessary in a suit instituted after June, 1918, for personal service to be effected for the purposes of an appeal, and to that extent the learned Judge in the court below was right. But it would appear that he did not consult the new rules, or that the point was not taken before him, because if he had looked at the new Rule 22 of Order VII, he would have seen that, although service by fixing to the outer door of the house is *prima facie* sufficient, where a party is not found at the address given by him, one *locus penitentie* is given to him if he is absent at the hearing. The latter part of the now Rule 22 of Order VII runs in this way:

"If on the date fixed such party is not present, another date shall be fixed and a copy of the notice shall be sent to the registered address by registered post, and such service shall be deemed to be as effectual as if the notice, or process had been personally served;" and that rule by the new Rule 38(8) of Order XLI is applied to appellate proceedings. The procedure through service by post or fixing to the door is *prima facie* sufficient, but if the party is absent at the hearing, where service has been effected in that way, the court itself fixes a fresh date and directs additional service by registered post. That provision has been omitted in this case, which gives

the appellant the right to come here and to have a second shot.

2. It is desirable that the attention of the lower court should be drawn to the working of these rules which establish a new and somewhat stringent procedure.

3. We set aside the order of the District Judge and direct him to re-admit the appeal and to dispose of it according to law.

4. This appeal has been heard ex parte. The costs in this Court will be costs in the cause.