

(1897) 12 AHC CK 0003**Allahabad High Court****Case No:** None

Shankar Dat Dube

APPELLANT

Vs

Radha Krishna

RESPONDENT

Date of Decision: Dec. 23, 1897**Acts Referred:**

- Civil Procedure Code, 1882 - Section 108

Citation: (1898) ILR (All) 195**Hon'ble Judges:** John Edge, C.J; Blair, J**Bench:** Division Bench**Final Decision:** Disposed Of

Judgement

John Edge, C.J. and Blair, J.

Rai Radha Krishna brought a suit against Shankar Dat Dube, then Raja of Jaunpur, on a bond alleged to have been given by the Raja's deceased elder brother. The Raja entered an appearance, filed a written statement and appointed pleaders to act for him. One of those pleaders was one Satish Chandar, a pleader practising at Benares. The suit in question was filed in the Court of the Subordinate Judge of Benares, and the vakalatnamah which was given by the Raja authorised Satish Chandar and the other pleaders therein named to conduct the suit on behalf of the Raja, and to answer any questions, &c. Satish Chandar obtained more than one adjournment, and on the 31st of January 1896, he obtained an adjournment until the 19th of March in that year. On the 19th of March when the suit was called on for hearing and disposal, Satish Chandar stated that no one had come near him on the part of the Raja, and that he had no instructions. Thereupon the Subordinate Judge proceeded to dispose of the suit upon the evidence on the record, and, arriving at a finding in favour of the plaintiff, made a decree for the plaintiff. Raja Shankar Dat Dube subsequently applied to the Subordinate Judge u/s 108 of Act No. XIV of 1882 for an order to set aside the decree. The Subordinate Judge, without considering whether Raja Shankar Dat Dube was prevented by sufficient cause from appearing

and maintaining his defence at the hearing on the 19th of March 1896, dismissed the application on the ground that the decree in question which he had passed against raja Shankar Dat Dube was not a decree passed *ex parte*. He appears to have arrived at that conclusion because he considered that on the 19th of March 1896, the raja was represented by Satish Chandar having instructions. This is an appeal from that order.

2. Although Satish Chandar was still the *vakil* of the Raja, and under his *vakalatnamah* had full authority to act in the suit within the limits of that *vakalatnamah* for the Raja he stated that he had no instructions. We understand from that, that he had practically retired from the case. It is difficult to understand how a pleader, even in the Court of the Subordinate Judge of Benares, can conduct a case for the defendant without instructions. It appears to us that the decisions of the Court in *Bhagwan Dai v. Hira* ILR 19 All. 355, and of the High Court at Calcutta in *Jonardan Dobey v. Ramdhone Singh* ILR 23 Cal. 738, are authorities in favour of the contention of the appellant that an application lay in this case u/s 108 of Act No. XIV of 1882. On the other hand we have been pressed by the learned Counsel for the plaintiff decree-holder with the decision of their Lordships of the Privy Council in *Sahibzada Zein-ul-abdin Khan v. Sahibzada Ahmad Baza Khan* L.R. 5 IndAp 233 : S.C. ILR 2 All. 67. The procedure which the Subordinate Judge must, in our opinion, have adopted was that u/s 157 of Act No. XIV of 1882. That section makes applicable, so far as may be, to cases coming within the section the procedure of Chapter VII of the Code. Section 157 apparently relates to a later period in the litigation than the sections which are to be found in Chapter VII, but there is no difficulty in ascertaining the rule to be followed in cases u/s 157 by reference to Chapter VII. It has been contended for the plaintiff decree-holder that the effect of the decision of their Lordships of the Privy Council in *Sahibzada Zein-ul-abdin Khan v. Sahibzada Ahmad Raza Khan* L.R. 5 IndAp 238 : ILR 2 All. 67, is that there can be no decree which can be called a decree *ex parte* against a defendant who has at any time and on any occasion before the decree is made put in an appearance in the suit, although at the hearing he may have been absent and unrepresented, or may have had present merely a pleader who had no instructions. In our opinion the decision of their Lordships of the Privy Council merely referred to the opening paragraph of Section 119 of Act No. VIII of 1859. That section itself shows quite clearly that there can be *ex parte* decrees against defendants whether or not they have put in appearances in the suit. The prohibition of an appeal in the earlier part of Section 119 is limited, to apply the decision of their Lordships of the Privy Council, to a case in which the defendant had not put in any appearance at all. In our opinion the decision of their Lordships of the Privy Council has no bearing on the case before us here.

3. We hold that this was a decree passed *ex parte* against a defendant within the meaning of Section 108 of Act No. XIV of 1882 for, although the defendant's pleader was physically present in Court, he was not there representing the defendant in the

suit. We set aside the order under appeal, and we remand this case u/s 562 of Act No. XIV of 1882 to the Court of the Subordinate Judge to be disposed of on the merits. We make this order with costs to the representative of Raja Shankar Dat Dube.