(1925) 05 AHC CK 0019

Allahabad High Court

Case No: None

Mt. Saliman and Another		APPELLANT
	Vs	
Abdul Aziz and Others		RESPONDENT

Date of Decision: May 6, 1925

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Section 151

Citation: AIR 1925 All 777

Hon'ble Judges: Daniels, J

Bench: Division Bench

Final Decision: Dismissed

Judgement

Daniels, J.

This is an application in revision from an order granting review of judgment. The facts of the case are as follows : The application was originally presented to the Munsif as an application u/s 151 of the CPC and was allowed. The application was presented immediately after the decision of the case. The Munsif informed the vakil of the present applicants of the application but he said that as his clients had gone away he could not make any submission with regard to it. The application was, however, as already stated, allowed and the decree modified. The defendants went in appeal to the District Judge. The District Judge considered that the application was not really one u/s 151 but was in substance an application for review of judgment. He directed that it should be treated as an application for review of judgment, and sent it back to the trial Court for decision according to law. The matter was then heard in presence of both parties and eventually the review was granted in favour of the plaintiffs. The defendants have now come in revision to this Court.

2. There is a certain preliminary difficulty in the way of this application in that it cannot be said that the learned Judge acted without jurisdiction or with material irregularity or illegality in the exercise of his jurisdiction and while the order of the

Munsif which is attached has merged in the order of the appellate Court. The applicants, however, contend that this question is concluded in their favour by the Full Bench decision in the case of Badami Kuar v. Dinnu Rat (1886) 8 All. 111. Assuming, however, that the revision lies it cannot in our opinion succeed. The first contention of the applicants is that they had no notice of the application. It is difficult to say how this contention can be seriously maintained in view of the fact that the order that the application should be treated as one for review, was passed on an appeal filed by themselves. Their second objection is that if the order of the application is treated as being an application for review only from the date of the appellate Court it would be time-barred. The answer to this is that the appellate Court directed that the application should be treated as having been from the beginning in substance an application for review and not an application tinder Section 151. The third and last objection is that the application was not accompanied by a copy of the decree and that sufficient court-fee was not paid upon it. When the whole matter has been gone into and finally decided this Court will not treat the proceedings as a nullity in revision on either of these grounds. We accordingly dismiss the application with costs.