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(1880) 01 AHC CK 0003

Allahabad High Court

Case No: None

Muhammad Bakhsh APPELLANT

Vs

Nand Ram and Others RESPONDENT

Date of Decision: Jan. 7, 1880

Citation: (1880) ILR (All) 616

Hon'ble Judges: Robert Stuart, C.J; Straight, J

Bench: Division Bench

Final Decision: Dismissed

Judgement

Robert Stuart, C.J.

We cannot entertain this appeal. The Judge having proceeded u/s 556 of the Civil Procedure Code, the defendants ought to have applied to the Judge of the District for the re-admission of the appeal to him u/s 558,1 and the only further procedure open to the defendants was by an appeal to this Court from the Judge''s order u/s 588 as amended by Act XII of 1879, Section 90(27), but not having proceeded before the Judge u/s 558, there is no appeal to us, and the order of the Judge made u/s 556 is now final.

2. The Judge must be assumed to have done his duty according to law and the course of his Court, and with the exception of a vague suggestion as to the defendant not having known when his appeal to the Judge was coming on for hearing, nothing is stated to us against such an assumption, which we feel assured in this case is a very just one. In any case the appeal to this Court being wholly incompetent, must be rejected with costs.

Straight, J.

3. In this case an appeal was preferred to the Judge of Meerut from a decision of the Assistant Collector of Bulandshahr. The 26th November 1878, was fixed for the hearing, but though the parties attended Court on that day the case was not called on. It was ultimately disposed of on the 18th February 1879, the Judge, owing to the

absence of the appellant, dismissing the appeal u/s 556 of Act X of 1877. The matter now comes to this Court in second appeal.

4. I am of opinion, that no such appeal lies to this Court. The order made by the Judge was, as has been remarked, passed u/s 556 of the Civil Procedure Code, and the course the appellant should have pursued was to make an application u/s 558 for re-admission of his appeal within thirty days from the date of the Judge''s decree. All the points now urged in his behalf would have gone far to establishing the "sufficient cause" mentioned in that section, and had the Judge improperly or unreasonably refused such an application, his order would then, u/s 588 of Act X of 1877, have been appealable. This appeal is dismissed with costs.

Dismissal of appeal for appellant''s default.

[Section 556:--If on the day so fixed, or any other day to which the hearing may be adjourned, the appellant does not attend in person or by his pleader, the appeal shall be dismissed for default.