
(1986) 03 AHC CK 0025

Allahabad High Court (Lucknow Bench)

Case No: Writ Petition No 2816 of 1980

Baldeo Singh and
Others

APPELLANT

Vs

Distt.Judge, Faizabad
and others

RESPONDENT

Date of Decision: March 12, 1986

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Order 9 Rule 13, 115

Hon'ble Judges: K.S.Varma, J

Final Decision: Allowed

Judgement

K.S. Varma, J.

In this writ petition I have heard learned counsel for the petitioner. Opposite parties 2 and 3 have not put in appearance inspite of service having been affected on them.

2. A perusal of the record indicates that an exparte decree was passed by Additional Munsif., VI, Faizabad, in Regular Suit No. 164 of 1976 in favour of respondent 2 and 3. That exparte decree was set aside by the Additional Munsif by order dated 741979. Against the said order a revision was preferred in the Court of District Judge, Faizabad. The learned District Judge by order dated 271980 allowed the revision application and the exparte decree passed in favour of the respondents 2 and 3 was maintained. Against the order of the District Judge, Faizabad, defendants have come up in writ petition before this Court.

3. I have perused the order passed by the District Judge, Faizabad and I find that it is not possible to sustain the order. The well established principle is that as far as possible the parties should be allowed to contest the suit filed against them and the passing of exparte decree is not favoured. The Hon"ble Supreme court has consistently held that view. The powers under Section 115 of the Code of Civil Procedure are discretionary and should be exercised in the ends of justice.

4. In view of the settled view of the Supreme Court, referred to above, the learned District Judge should not have dismissed the application for setting aside the ex parte decree. The parties should have been allowed to contest the suit on merits. In my opinion, the exercise of jurisdiction by the District Judge, Faizabad suffers from obvious illegality.

5. For the reasons stated above, the writ petition is allowed. The exparte decree dated 12/11/1979 passed in Regular Suit No. 164 of 1976 is set aside and the trial court is directed to decide the case on merits after affording opportunity to the defendants to defend their case. Since no one has appeared on behalf of the respondents costs shall be on parties.