

(1879) 04 CAL CK 0006

Calcutta High Court

Case No: None

Jhotee Sahoo

APPELLANT

Vs

Omesh Chunder
Sircar

RESPONDENT

Date of Decision: April 21, 1879

Acts Referred:

- Charter Act, 1861 - Section 15
- Limitation Act, 1963 - Section 5(b)

Citation: (1880) ILR (Cal) 1

Hon'ble Judges: Tottenham, J; Mitter, J

Bench: Division Bench

Judgement

Mitter, J.

In this case we are of opinion that the Subordinate Judge was not competent to cancel the order of the District Judge by which the appeal of the appellant was allowed to be registered although filed beyond time. Under Clause b, Section 5 of the Limitation Act of 1871, the District Judge, being satisfied that the appellant had sufficient cause for not being able to present the appeal within the prescribed time, allowed it to be registered. No doubt this was an ex parte order, because at that time the respondent had not entered appearance, and on a proper cause being shown, such an ex parte order is liable to be cancelled by the Court which passed it; but the Subordinate Judge in this case is not competent to revoke the order of the District Judge. The decision cited by the Subordinate Judge does not support his view of the law. In that case the appeal was ordered to be registered by a single Judge of the Allahabad High Court, and the case coming on for hearing, upon the objection of the respondent, who had not appeared at the time when the appeal was ordered to be registered, the Court held that the appeal should not have been registered, and cancelled the first order. There the same Court, upon proper cause being shown, cancelled the first order.

2. We therefore set aside the decree of the lower Appellate Court, dismissing the appeal of the defendant, and remand the case to that Court for re-trial.
3. The pleader for the respondent contends, that as the order of the District Judge directing the appeal to be registered was passed without taking any evidence upon the matter, that order ought to be set aside by this Court under the provisions of Section 15 of the Charter Act. But under the circumstances of this case, we do not think that in the interests of justice we are called upon to interfere with that order of the Judge.
4. The costs of this appeal will abide the result. This order will govern appeal No. 315 of 1878.