

36 Ind. Cas. 624

Calcutta High Court

Case No: None

Jadu Kanta Sarma and
Another

APPELLANT

Vs

Hema Kanta Goswami

RESPONDENT

Date of Decision: Aug. 23, 1916

Citation: 36 Ind. Cas. 624

Hon'ble Judges: Smither, J; Richardson, J

Bench: Division Bench

Judgement

1. This is an appeal from an order dated the 17th September 1915 made by the Subordinate Judge of Tezpur. By this order the learned Subordinate Judge refused to set aside an ex parte decree which he had made upon an appeal preferred by the opposite party. It appears that in the notices of the appeal served upon the two petitioners the date on which the appeal was to be heard was not specified. Rule 14 of Order XLI requires that the date fixed for the hearing of an appeal should be specified in the notice served on the respondents.

2. In our opinion the learned Subordinate (Judge) was wrong in refusing to set aside the ex parte decree and re-hear the appeal. We must accordingly set aside the order appealed from and direct that the appeal be re-heard in due course of law. The costs, including the hearing fee which we assess at one gold mohur, will abide the result.