

APPELLATE CIVIL.

Before Sanderson C. J. and Richardson J.

1921

Nov. 17.

MAHARAJ KISHORE KHANNA

v.

KIRAN SHASHI DASL.*

*Appeal—Order restoring a suit—“ Judgment ”—Letters Patent, 1865, cl. 15
—Civil Procedure Code (Act V of 1908) O IX, r. 9.*

No appeal lies from an order made under O. IX, r. 9 of the Civil Procedure Code (Act V of 1908) restoring a suit.

APPEAL from a judgment of Greaves J.

This was an appeal preferred by the defendant, Maharaj Kishore Khanna, against an order made by Mr. Justice Greaves, on the 15th July 1921, setting aside an order of dismissal and restoring the suit.

Sir Binod Mitter and *Mr. K. P. Khaitan*, for the appellant.

Mr. N. N. Sircar and *Mr. S. M. Bose*, for the respondent, took a preliminary objection that no appeal lay.

SANDERSON C. J. In this case a preliminary point has been taken that no appeal lies. On the 9th of May 1920, the plaintiff did not appear and the suit was dismissed for want of prosecution: and, on the 15th of July 1920, my learned brother Mr. Justice Greaves made an order, as he describes it in his judgment, restoring the suit. I assume that that order was made under Order IX, r. 9, Civil Procedure Code, and as

appears from the terms of the order, the order of the 9th of May was set aside, and the suit was restored to the General List of suits of this Court upon terms which were therein stated. The appeal is against the order of the 15th of July 1921, whereby the order of the 9th of May was set aside.

The learned counsel for the respondent cited to us a case which was decided by my learned brother Mr. Justice Woodroffe and myself in March 1919, *Johuri Mull Jhoonjhoonwalla v. Ram Kumar Chowdhuri and Another* (1), in which this very point arose, and in which we decided that the order was not a "judgment" within the meaning of clause 15 of the Letters Patent: and, consequently, that there was no right of appeal. That case covers the present one. The learned counsel for the appellant, however, has drawn our attention to another case, *Padmabati Dabi v. Tulsimunjuri Dabi and Another* (2), which was decided by my learned brother Mr. Justice Woodroffe and myself in June 1918. That dealt with an application under Order XXII, with regard to a case where the suit had abated. In that case my learned brother Mr. Justice Woodroffe delivered the judgment and I agreed with him. The learned counsel for the appellant has argued that the reasoning upon which that judgment was based is inconsistent with the decision in the case of *Johuri Mull Jhoonjhoonwalla v. Ram Kumar Chowdhuri* (1), and he has asked us to refer the matter to a Full Bench. Although the reasoning in that prior case of June 1918 may be to some extent inconsistent with the decision of the latter case which was decided in March 1919, my learned brother and I are of opinion that we

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(1) (1919) A. O. D. No. 5 of 1919
 (O. S.) unreported.

(2) (1918) A. O. D. 16 of 1918
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should abide by the decision in *Jhoonjhoonwalla v. Ram Kumar Chowdhuri* (1) which, as I have already said, is a direct decision upon the point before us : and, therefore, we hold that there is no appeal in this case, and the appeal must be dismissed with costs.

RICHARDSON J. agreed.

N. G.

Appeal dismissed.

(1) (1919) A. O. D. No. 5 of 1919 (O. S.) unreported.

APPEAL FROM ORIGINAL CIVIL.

Before Sanderson C.J. and Richardson J.

SILENDRA MOHAN DUTT

v.

DHARANI MOHAN ROY.*

1921
 Nov. 30.

*Costs—Taxation—Jurisdiction of the Judge—High Court (Original Side)
 Rules, Chapter XXXVI, rr. 6 & 32.*

In an application by an attorney for direction as to taxation of certain fees, not ordinarily allowable under the High Court (Original Side) Rules, Chapter XXXVI, r. 32, the learned Judge refused to go into the merits of the case on the ground of absence of jurisdiction in the matter. On appeal :
Held, that the learned Judge had jurisdiction in the matter.

APPEAL from an order of Greaves J.

Dharani Mohan Roy, the respondent, was the defendant in a suit on the Original Side of the High Court and he engaged the appellant, Babu Sailendra Mohan Dutt, an attorney of this Court, to act for him. Pending suit an order for change of attorney was made on the respondent paying a sum of Rs. 6,000 to the appellant for his costs, subject to

* Appeal from Original Civil No. 18 of 1921 in suit No. 118 of 1920.