

1902  
 May 14.

*Before Mr. Justice Aikman and Mr. Justice Banerji.*

GULAB KUNWAR (DEFENDANT) v. THAKUR DAS (PLAINTIFF).\*

*Civil Procedure Code, sections 558, 558, 591—Appeal—Order for re-admission of appeal dismissed for default not capable of being used by the appellant as a ground of objection to the decree.*

An order under section 558 of the Code of Civil Procedure readmitting an appeal which had been dismissed for default under section 556 is not appealable; neither is it an order "affecting the decision of the case" which "may be set forth as a ground of objection in the memorandum of appeal" from the decree in the suit within the meaning of section 591 of the Code. *Chintamony Dassi v. Raghoonath Sahoo* (1), followed.

THE facts of this case sufficiently appear from the judgment of the Court.

Pandit *Sundar Lal* (for whom *Munshi Gokul Prasad*), for the appellant.

Dr. *Satish Chandra Banerji* (for whom *Pandit Mohan Lal Nehru*), for the respondent.

AIKMAN, J. (BANERJI, J., concurring).—This appeal arises out of a suit brought by the plaintiff-respondent upon two hundis drawn by Musammât Mohan Kunwar in favour of the plaintiff. Mohan Kunwar being dead the suit was brought against the defendant-appellant as her legal representative. The defence was a denial of the hundis. The Court of first instance (the Munsif of Agra) dismissed the suit, holding that the execution of the hundis was not proved. On appeal by the plaintiff the learned Subordinate Judge came to an opposite finding upon a consideration of the evidence, and holding that the hundis were proved, granted the plaintiff a decree for the amount claimed, to be recovered from the estate of Mohan Kunwar. Against this decree the present appeal has been filed. The first ground taken in the memorandum of appeal is admittedly one which cannot be supported. It is to the effect that the appellant is not liable in law for the payment of Mohan Kunwar's debt. The appellant has not been made personally liable, but only to the extent of any assets which Mohan Kunwar may have left, and which may be in the appellant's hands.

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\* Second Appeal No. 157 of 1900, from a decree of Rai Bahadur Babu Baij Nath, Subordinate Judge of Agra, dated the 20th of January 1900, reversing a decree of Khwaja Abdul Ali, Munsif of Agra, dated the 19th of July 1899.

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The two remaining grounds impugn an order of the lower appellate Court, which, under the provisions of section 558 of the Code of Civil Procedure, restored the appeal, which it had dismissed for default under section 556. The law allows an appeal from an order refusing to grant an application under section 558 for the restoration of an appeal. But it does not provide for an appeal from an order granting such an application. The learned vakil relies upon section 591 of the Code of Civil Procedure. That section provides that, if a decree be appealed against, any error, defect or irregularity in an order not otherwise appealable affecting the decision of the case, may be set forth as a ground of objection in the memorandum of appeal. We are of opinion that the meaning of the words in section 591 "affecting the decision of the case" is that it must be shown that the error, defect or irregularity has affected the decision of the case on the merits. In this view an order such as that complained against in this case is not an order contemplated by section 591. In so holding, we are borne out by the decision in the case of *Chintamony Dassi v. Raghonath Sahoo* (1), with which we are in entire accord. For these reasons we dismiss this appeal with costs.

*Appeal dismissed.*

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*Before Mr. Justice Banerji and Mr. Justice Aikman.*

MADAN MOHAN LAL (PLAINTIFF) v. DILDAR HUSAIN (DEFENDANT).\*  
*Act No. XII of 1881 (N.-W. P. Rent Act), section 23—Suspension of revenue and consequent suspension of rent—Lessee entitled to the benefit of suspension of rent.*

*Held* that when the Local Government, under section 23 of the N.-W. P. Rent Act, suspends payment of revenue, and when suspension of rent has in consequence been ordered, a lessee is entitled to the benefit of the latter suspension.

THIS appeal arose out of a suit for arrears of rent under clause (a) of section 93 of the North-Western Provinces Rent Act. The suit was based upon a lease granted by the plaintiff

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\* Second Appeal No. 59 of 1900, from a decree of Khan Bahadur Mir Akbar Husain, District Judge of Allahabad, dated the 3rd of October 1899, confirming a decree of Babu Badri Nath, Assistant Collector, Allahabad, dated the 2nd of September 1899.