

in the circumstances of the case that the record should be placed before the present District Magistrate so that he may examine it himself and see whether or not it is any longer necessary to keep the opposite party under his bond. I direct accordingly.

*Order set aside.*

1912

BANARSI DAS  
v.  
PARTAB  
SINGH.

## APPELLATE CIVIL.

*Before Mr. Justice Tudball and Mr. Justice Muhammad Raftq.*

BALDEO PRASAD AND ANOTHER (PLAINTIFFS) v. KUNWAR BAHADUR  
AND ANOTHER (DEFENDANTS).\*

1912,  
December, 3.

*Code of Civil Procedure (1908), order IX, rule 8—Appeal. Dismissal for non-appearance of appellant—Appellant present but unrepresented and unable to argue the appeal himself—Procedure.*

On the date fixed for the hearing of an appeal one of the two appellants (the other being a woman) appeared before the court and applied for an adjournment to enable him to procure the attendance of his pleaders. He was called on to argue his appeal, but he said he had nothing to say, and thereupon the appeal was dismissed on the ground that it had not been supported. *Held* that in these circumstances the court was not justified in dismissing the appeal for want of prosecution, but was bound to consider the grounds of appeal and to decide the case on the merits.

IN this case the appellants, Baldeo Prasad and Musammat Ram Piari filed a partnership suit in the court of the Subordinate Judge of Fatehgarh. The suit was dismissed. They filed an appeal in the court of the District Judge. This appeal was adjourned several times either on the application of the parties or by the court *suo motu*. Finally it was fixed for the 20th of December, 1911. On that date the male appellant appeared and asked for two days' adjournment to procure the attendance of his pleaders. Thereupon the court called upon him to argue the case himself, and, on his confessing his inability to do so, proceeded to dismiss the appeal as not being supported. The appellants preferred the present appeal to the High Court.

Dr. Tej Bahadur Sapru and Babu Durga Charan Banerji for the appellants.

Babu Sarat Chandra Chaudhri (for Dr. Satish Chandra Banerji) for the respondents.

\* Second Appeal No. 371 of 1912 from a decree of H. E. L. P. Dupernex District Judge of Farrukhabad, dated the 20th of December, 1911, confirming a decree of Gauri Shankar, Subordinate Judge of Fatehgarh, dated the 17th of March, 1911.

1912

BALDEO  
PRASAD  
v.  
KUNWAR  
BAHADUR.

TUDBALL and MUHAMMAD RAFIQ, J.J.:—This appeal arises out of the following circumstances. The plaintiff appellants Baldeo Prasad and Musammat Ram Piari filed a partnership suit in the Subordinate Judge's against the two respondents. The suit was dismissed. They filed an appeal, which was admitted on the 17th March, 1911, in the court of the District Judge. The date fixed for the hearing of the appeal, was the 6th of June. On the 31st of May on the application of the respondents the court fixed the 12th of July instead of the 6th of June. On that date the appeal was not heard, as the District Judge had no time by reason of other work. It was adjourned to the 28th of July. Again the court *suo motu* adjourned the appeal to the 28th of September. On that date at the appellant's request and with the consent of the respondents the appeal was adjourned to the 8th of November. On the 3rd of November the court of its own motion fixed the 6th of December for the hearing of the appeal. On this date the respondent's pleader was absent having gone to the Delhi Durbar. The case was adjourned for this reason to the 20th of December. So far the case had been adjourned only once at the request of the appellants and twice at the request of the respondents and three times for the convenience of the court. On the 20th of December the male appellant Baldeo Prasad appeared and applied for two days' adjournment to secure the attendance of his pleaders. One of them had gone to Agra and was expected back on the 22nd of December. The other had gone into the camp. There is no order on the application, but apparently it was rejected and the Judge called on the male appellant to argue the case. Not being a lawyer, the man was unable to do so, and fairly said that he had nothing to say. The learned Judge's judgement runs as follows:—"Respondents' pleader urges that as the appeal is not supported it should be dismissed. I agree." For this reason the District Judge dismissed the appeal without going into the merits. The female appellant Musammat Ram Piari subsequently filed an application for hearing on the ground that sufficient cause for her non-appearance could be established. This application was rejected. There are two appeals before us, one from the original decree and the other from the order rejecting the application of Musammat Ram Piari.

It is quite clear that the learned District Judge is wrong. To ask a non-legal appellant to argue his case is asking for what is practically impossible. The application for adjournment shows clearly and distinctly that he did not wish to drop his appeal. He wished to press it. The bare fact that he could not argue it did not justify the District Judge in dismissing it. It was necessary for him under the circumstances to consider the grounds of appeal and to decide the case on the merits. This he has not done. We therefore admit the appeal, set aside the decree of the District Judge and remand the case to his court with directions to re-admit the appeal to its original number in the register and to dispose of it on the merits. Costs will follow the event.

*Appeal allowed and cause remanded.*

1912

---

 BALDEO  
 PRASAD  
 v.  
 KUNWAR  
 BAHADUR.

 1912,  
 November, 18.
 

---

*Before Sir Henry Richards, Knight, Chief Justice, and Mr. Justice Banerji.*  
 SABTA PRASAD AND ANOTHER (DEFENDANTS) v. DHARAM KIRTI SARAN  
 AND OTHERS (PLAINTIFFS).\*

*Arbitration—Award—Party to the suit not made party to the submission to arbitration—Party so omitted not a necessary party to the suit.*

*Held* that an arbitration and an award made in the course of a suit would not be rendered invalid by the mere fact that a party whose name was on the record, but who was not a necessary party to the suit, was not made a party to the arbitration proceedings

In a suit for partition of the property of a joint Hindu family between two branches thereof, the widow of one of the members of the family was made a party defendant. The subject matter of the suit was referred to arbitration, but to the submission the widow was not a party. An award was made, upon which a decree followed which was in accordance with the award. Against this decree the defendants appealed upon the ground that the widow was no party to the arbitration proceedings upon which the decree rested.

Mr. B. E. O'Connor and Maulvi Ghulam Mujtaba for the appellants.

Mr. A. H. C. Hamilton, The Hon'ble Pandit Madan Mohan Malaviya, Babu Jogindro Nath Chaudhri, Babu Satya Chandra Mukerji, Munshi Girdhuri Lal Agarwala, Munshi Benode Behari and Pandit Rama Kant Malaviya, for the respondents.

---

\*First Appeal No. 264 of 1910, from a decree of S. R. Daniels, District Judge of Moradabad, dated the 8th of May, 1909.