

Before Mr. Justice Mukerji and Mr. Justice Niamat-ullah.

FAQIR CHAND (DEFENDANT) v. HARKISHUN DAS
(PLAINTIFF).*

1929
April, 26.

Civil Procedure Code, section 115; order IX, rule 9—Revision—"Case decided"—Dismissal for default—Restoration—Jurisdiction to revise.

The setting aside of an order dismissing a suit for default of appearance constitutes a "case decided" within the meaning of section 115 of the Civil Procedure Code, and the High Court has jurisdiction to revise the order of restoration. *Ram Sarup v. Gaya Prasad* (1), applied. *Buddhu Lal v. Mewa Ram* (2), referred to.

Messrs. *Uma Shankar Bajpai, Hazari Lal Kapoor* and *G. S. Pathak* for the applicant.

Dr. M. L. Agarwala, for the opposite party.

MUKERJI and NIAMAT-ULLAH, JJ. :—The respondent brought a suit in the court of the Munsif of Bareilly against the applicant, in which the 17th of January, 1928, was fixed for fixing of issues. On that date the case was called, the plaintiff was found absent and the suit was dismissed for default. The same day the plaintiff appeared with an application for restoration; but it appears that the application was actually filed the next day. The learned Munsif, after issuing notice to the other side, restored the suit. The defendant has come up in revision, asking that this order restoring the suit should be set aside.

A preliminary objection has been taken by the learned counsel for the respondent that no revision lies. He relies on the Full Bench case of *Buddhu Lal v. Mewa Ram* (2). In that case what was to be decided was, where a subordinate court had merely decided the question of jurisdiction, whether an application in revision lay in the High Court or not.

* Civil Revision No. 309 of 1928.

(1) (1925) I. L. R., 48 All., 175. (2) (1921) I. L. R., 43 All., 564.

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Three learned Judges as against two held that no application in revision lay. It was laid down that the decision of one of the issues which did not dispose of the whole case was not a "case decided", within the meaning of section 115 of the Civil Procedure Code. In a recent case which came up in revision before this Court, the question was whether the setting aside of a decree, which had been passed *ex parte* by the appellate court, constituted a case fit for revision by this Court. Three learned Judges held that it was a "case" within the meaning of section 115. We are of opinion that the circumstances before us fall within the purview of the later ruling, viz., *Ram Sarup v. Gaya Prasad* (1). We hold that we have jurisdiction to revise the order of the 2nd of June, 1928.

Coming to the merits, we find that while the learned Munsif thought that the plaintiff's conduct was negligent, he did not hold that there was no sufficient cause for the plaintiff's non-appearance when the suit was called for hearing, within the meaning of order IX, rule 9, of the Code of Civil Procedure. The fact that the plaintiff appeared the same day and gave an explanation which satisfied the learned Munsif was sufficient ground for restoration of the suit. There is nothing to revise, and we dismiss the application with costs.

(1) (1925) I. L. R., 48 All., 175.