

Before Mr. Justice Mukerji and Mr. Justice Bennet.

DHARAM DAS (PLAINTIFF) v. SHANKAR AHIR
(DEFENDANT)*

1931
January,
10.

Civil Procedure Code, order XLI, rules 11 and 31—Summary dismissal of appeal—Judgment to give reasons.

An order dismissing an appeal summarily under order XLI, rule 11, of the Civil Procedure Code should conform to the requirements of a judgment as laid down by order XLI, rule 31, i.e. it should set forth the points for determination, the decision thereon and the reasons for the decision.

Mr. *Haribans Sahai*, for the appellant.

Messrs. *P. L. Banerji* and *Deo Narain Singh*, for the respondent.

MUKERJI and BENNET, JJ.:—This is a second appeal in which the point which has been raised before us on behalf of the appellant plaintiff is that the judgment of the lower appellate court dismissing the appeal of the plaintiff is not a judgment according to law. The judgment is as follows:—

“The facts are laid out in the judgment of the lower court. The division is a reasonable one, and as a court of appeal I am not justified in going against it. Rejected summarily. (Sd.) A. H. De B. Hamilton”.

On behalf of the respondent it was argued that this judgment was sufficient for the purpose of dismissal of an appeal summarily under order XLI, rule 11. That rule states that “the court may make an order that the appeal be dismissed”. But we consider that such an order should be governed by the provisions of order XLI, rule 31, which states: “The judgment of the appellate court shall be in writing and shall state (a) the points for determination; (b) the decision

*Second Appeal No. 554 of 1928, from a decree of A. H. de-B. Hamilton, District Judge of Allahabad, dated the 6th of January, 1928, confirming a decree of Triloki Nath, Assistant Collector, first class of Allahabad, dated the 30th of September, 1927.

thereon; (c) the reasons for the decision; and (d) where the decree appealed from is reversed or varied, the relief to which the appellant is entitled." In the present case the learned District Judge should have set forth the points for determination, the decision thereon and the reasons for the decision. He has altogether failed to comply with this direction of law. The view of law which we take has been followed in *Gupta Nand v. Behari Lal* (1) and *Ma Saw v. Ma Bwin Byu* (2). For the respondent attention was invited to *Samin Hasan v. Piran* (3), but that case is different, because in that case the judgment in question did give brief reasons. In the judgment before us of the lower appellate court no reasons whatever are given. Accordingly we allow this appeal, set aside the decree of the lower appellate court and direct that that court do admit this appeal and dispose of it according to law. Costs hitherto incurred will be costs in the case.

1931

 DHARAM
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Before Mr. Justice Mukerji and Mr. Justice Bennet.

MADHO RAO (APPLICANT) v. GUR NARAIN (OPPOSITE-PARTY)*

 1931
January,
18.

Civil Procedure Code, section 50—Civil death—Sanyasi—Judgment-debtor becoming sanyasi—Execution of decree.

In section 50 of the Civil Procedure Code the word "dies" is used apparently in its natural sense and there is nothing in the section or any other portion of the Code which indicates that this word is intended to include civil death.

So, if a judgment-debtor becomes a *sanyasi* it does not necessitate the taking of proceedings in execution against the persons who would be his "legal representatives".

Mr. R. K. Malaviya, for the appellant.

Mr. Baleshwari Prasad, for the respondent.

*First Appeal No. 45 of 1930, from a decree of Paighambar Baksh, Parganah Officer of Bharthana, District Etawah, dated the 4th of December, 1929.

(1) (1923) 21 A.L.J., 567.

(2) (1926) I.L.R., 4 Rang., 66.

(3) (1908) I.L.R., 30 All., 319.