

**SUREME COURT OF INDIA**

Raj Kumar

Vs.

Prescribed Authority, Moradabad

(E Venkataramiah and P Bhagwati JJ.)

14.02.1983

**ORDER**

1. We find from the judgment of the High Court impugned in the present appeal by special leave that the High Court did not consider the second application of the appellant on merits but upheld its rejection by the Trial Court on the ground that the Trial Court had a discretion in the matter and was not bound to consider the second application on merits. This was clearly an erroneous view because once the High Court took the view, and in our opinion, rightly that the second application for setting aside the order for ex parte proceeding was not barred by any principle analogous to res judicata, the High Court should have held that the trial court was bound to consider the second application on merits and determine whether there was sufficient cause for the appellant not to file his counter affidavit in time and whether the order for ex parte proceedings was justified. It does appear from the judgment of the High Court that though the Trial Court held that the second application was barred on the principle of res judicata, it did consider the second application on merits but the High Court hearing the appeal against the order of the Trial Court did not consider the second application on merits. We therefore set aside the order passed by the High Court and remit the case to the High Court for the purpose of considering whether the Prescribed Authority was right in rejecting the second application on merits. Since the case is an old one, we would request the High Court to dispose it of at an early date and as far as possible, not later than 30-4-1983.

2. There will be no order as to costs of the appeal.