

Sourindra Mohan Hazra

Vs

State of West Bengal and Others

Civil Appeal No. 108 of 1982

(P. N. Bhagwati, E. S. Venkataramiah JJ)

11.01.1982

JUDGMENT

BHAGWATI, J. -

1. This is an appeal by special leave against the judgment dated January 11, 1979 passed by the Calcutta High Court allowing the second appeal preferred by the 1st respondent against the judgment of the District Judge, Burdwan confirming the decree passed by the 3rd Court of the Munsif at Burdwan in Title Suit No. 65 of 1968. When the second appeal reached hearing before the High Court on January 11, 1979 the appellant who was the principal respondent in the second appeal could not remain present, since according to him, he was not served with the notice of the appeal and the result was that the second appeal was allowed by the High Court ex parte against the appellant. We are of the view that the appellant had sufficient cause for not appearing at the hearing of the second appeal and the present appeal must therefore be allowed the judgment and order passed by the Calcutta High Court allowing the second appeal must be set aside and the second appeal must be remitted to the Calcutta High Court for disposal according to law.

2. We accordingly allow this appeal, set aside the judgment and order passed by the Calcutta High Court and remand the second appeal to the Calcutta High Court for disposal according to law. There will be no order as to costs of this appeal.

3. Since we have already allowed the appeal preferred against the judgment and order dated January 11, 1979 passed by the Calcutta High Court allowing the second appeal of the 1st respondent ex parte against the appellant, Special Leave Petition No. 4378 of 1980 does not survive and hence there will be no order on that special leave petition.

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