

Abdur Rahman and Others

Vs

Athifa Begum and Others

Civil Appeal No. 11460 of 1996

(M. M. Punchhi, K. T. Thomas JJ)

30.08.1996

ORDER

1. Leave granted.

2. The qualified notice issued to the respondents indicated that this Court proposed to grant leave against the impugned judgment and order of the High Court and on allowing the appeal was expecting to remit the matter back to the file of the High Court for disposal of the matter on its merits. The respondents' learned counsel has been confronted with the proposition that though the High Court could have dismissed the appeal in default in the absence of the appellants' counsel, it could not have adverted to the merits of the case. Here, the High Court has recorded that all relevant aspects of the matter have been taken into account in order to hold that there was no available ground for interference with the decision of the trial court. This was an exercise against which the High Court should have been well advised not to indulge in at the stage or (sic of) Order 41 Rule 17 CPC. The Explanation to Order 41 Rule 17(1) CPC says that nothing in this sub-rule shall be construed as empowering the court to dismiss the appeal on the merits. The High Court having transgressed that limit, we have therefore no option but to allow the appeal, set aside the impugned judgment and order of the High Court and put the matter back to its file for fresh disposal in accordance with law. Ordered accordingly. No costs.