

ALLAHABAD HIGH COURT

Baldeo Prasad

Vs

Kunwar Bahadur

(Tudball and Muhammad Rafiq, JJ.)

03.12.1912

JUDGMENT

Tudball and Muhammad Rafiq, JJ.

1. This appeal arises out of the following circumstances. The plaintiff appellants Baldeo Prasad and Musammat Ram Piari filed a partnership suit in the Subordinate Judge's against the two respondents. The suit was dismissed. They filed an appeal, which was admitted on the 17th March, 1911, in the court of the District Judge. The date fixed for the hearing of the appeal, was the 6th of June. On the 31st of May on the application of the respondents the court fixed the 12th of July instead of the 6th of June. On that date the appeal was not heard, as the District Judge had no time by reason of other work. It was adjourned to the 28th of July. Again the court suo motu adjourned the appeal to the 28th of September. On that date at the appellant's request and with the consent of the respondents the appeal was adjourned to the 8th of November. On the 3rd of November the court of its own motion fixed the 6th of December for the hearing of the appeal. On this date the respondent's pleader was absent having gone to the Delhi Durbar. The case was adjourned for this reason to the 20th of December. So far the case had been adjourned only once at the request of the appellants and twice at the request of the respondents and three times for the convenience of the court. On the 20th of December the male appellant Baldeo Prasad appeared and applied for two days adjournment to secure the attendance of his pleaders. One of them had gone to Agra and was expected back on the 22nd of December. The other had gone into the camp. There is no order on the application, but apparently it was rejected and the Judge called on the male appellant to argue the case. Not being a lawyer, the man was unable to do so, and fairly said that he had nothing to say. The learned Judge's judgment runs as follows: "Respondents' pleader urges that as the appeal is not supported it should be dismissed. I agree." For this reason the District Judge dismissed the appeal without going into the merits. The female appellant Musammat Ram Piari subsequently filed an application for hearing on the ground that sufficient cause for her non-appearance could be established. This application was rejected. There are two appeals before us, one from the original decree and the other from the order rejecting the application of Musammat Ram Piari. It is quite clear that the learned District Judge is wrong. To

ask a non-legal appellant to argue his case is asking for what is practically impossible. The application for adjournment shows clearly and distinctly that he did not wish to drop his appeal. He wished to press it. The bare fact that he could not argue it did not justify the District Judge in dismissing it. It was necessary for him under the circumstances to consider the grounds of appeal and to decide the case on the merits. This he has not done. We therefore admit the appeal, set aside the decree of the District Judge and remand the case to his court with directions to readmit the appeal to its original number in the register and to dispose of it on the merits. Costs will follow the event.

