

## Kali Prasad vs Birendra Bikram Singh on 23 October, 1952

**Equivalent citations: AIR1953ALL714, AIR 1953 ALLAHABAD 714**

### ORDER

1. Three suits were filed in the revenue Court against Yusuf Khan and Kali Prasad for recovery of theka money. The suits were decreed 'ex parte' on 2-7-1944. Kali Prasad applied for setting aside these 'ex parte' decrees under Order 9, Rule 13, Civil P. C. His applications for setting aside the decrees passed against him 'ex parte' were made on 21-4-1945, 7-5-1945 and 7-7-1945. On 19-11-1945, these applications were dismissed. Three appeals were filed against these orders of dismissal. Though the appellant filed a copy of the order of dismissal passed by the Court, no copy of any formal order or the memorandum of costs was filed in any of these appeals within the time allowed by law for preferring an appeal. The Court of appeal dismissed all the three appeals on the ground that no formal order was filed in any of them. Dissatisfied with this decision Kali Prasad has come up in revision to this Court.

2. It was contended by his learned Counsel, Mr. Hakimuddin, that under the rules contained in the Revenue Manual, which apply to appeals presented in Revenue Courts, no formal order was to be prepared in any of these cases. All that was necessary to do was to prepare a memorandum of costs in each of these cases as required by Rule 91B (3) which reads as follows :

"The preparation of a decree or formal order, apart from the order or judgment recorded by the Court, is not required in any but the cases above specified. But the order or judgment should in all cases state clearly the determination of the case, the costs incurred, and the parties by whom the costs are to be paid, and if costs are awarded, a memorandum of costs in the prescribed form should be drawn up."

Cases with which we are dealing do not fall within any of the categories above specified.

3. An examination of these rules shows that different rules employ different expressions to indicate the final adjudication by the Court which further specifies the costs incurred by each party and by whom they are to be paid, In Rule 52 we find that the only expression used is "decrees" or "orders" appealed against. In Rule 91B (2) the expression used is "formal order in the prescribed form", and in Rule 91B (3) the expression used is "memorandum of costs." That a memorandum of costs is different from a formal order is clear from a perusal of Sub-rule (3). In fact it expressly says that the preparation of a formal order is not required in any but the cases specified in Sub-rules (1) and (2) of Rule 91B. We find that the provisions of Order 41, Rules 1-4, Civil P. C. have been made applicable to appeals under the rules framed in the Revenue Manual. There is no provision in any of these rules which requires the memorandum of costs to be filed along with the judgment when there is an appeal preferred against an order in which under the rules no formal order should be prepared. We are, therefore of opinion that the failure of Kali Prasad to file the memorandum of costs prepared in each case along with the appeals prepared by him does not render his appeals infructuous. We are informed by Mr. Hakimuddin that at a later stage his client did file a copy of the memorandum of

costs prepared in each case for the purpose of the three appeals. We are satisfied that the view taken by the learned Civil Judge that the appeals preferred before him were incompetent for want of the memorandum of costs being filed was erroneous. As the view taken by him had led him to refuse to exercise a jurisdiction lawfully vested in him, we allow these revision applications, set aside the order of dismissal in each case and direct that the appeals be disposed of in accordance with law. In the circumstances of the case the parties shall bear their own costs.