

## **Mt. Abida Khatoon And Ors. vs Chote Khan And Ors. on 26 September, 1955**

**Equivalent citations: AIR1956ALL155, 1956CRILJ193, AIR 1956 ALLAHABAD 155**

ORDER

Agarwala, J.

1. This is an application in revision arising out of proceedings taken at the instance of the applicants under Section 476, Criminal Procedure Code. There was a civil suit No. 352 of 1942, decided by the court of Munsif, Shikohabad, for ejectment from a house and arrears of rent. The suit was decreed on 30-9-1943, Thereafter the plaintiffs filed an application under Section 476, Cr. P. C., against four of the defendants and eight others for their prosecution under Section 193 and other sections of the Penal Code. On 25-5-1946 this application was allowed ex parte and an order for the prosecution of the opposite parties was made.

They went up in appeal to the District Judge who, however, dismissed the appeal for default of appearance on 11-12-1948. The defendants then filed an application for setting aside the ex parte order of dismissal and for restoration of the case to its original number. This application was allowed. In the present application in revision the plaintiffs contend that the court below had no jurisdiction to restore the appeal dismissed for default because the Criminal Procedure Code does not provide for the same.

As the proceedings initiated under Section 476 Cr. P. C., arose out of civil proceedings and were heard by a civil court and as an appeal under Section 476B of the Criminal Procedure Code also lay to the civil court, the proceedings must be treated as civil proceedings to which the Civil Procedure Code applies and not criminal proceedings to which the Criminal Procedure Code will apply, barring of course Sections 476, 476A and 476B of the Criminal Procedure Code, vide -- 'Jarbandhan v. Emperor', AIR 1946 All 245 (A), -- 'Nawab Ali v. Madhuri', AIR 1927 Oudh 14 (B); and -- 'Valab Das v. Maung Ba Than', AIR 1924 Rang 54 (C).

If these were civil proceedings and the Civil Procedure Code applies, then although the appeal is provided for in Section 476B, Criminal P. C., its procedure for hearing would be governed by Order 41, C. P. C., and as such when the appeal is dismissed for default and an application for its restoration is made under Order 41, Rule 19, C. P. C., the lower court has jurisdiction to restore the appeal;

2. There is no force in this revision. It is accordingly dismissed. The opposite parties are entitled to their costs of this revision.