

Abdur Rahman & Ors vs Athifa Begum & Ors on 30 August, 1996

Equivalent citations: AIRONLINE 1996 SC 621, 1996 (11) SCC 163, (1996) 2 LJR 562, (1996) 3 CURCC 394, (1996) 4 ICC 144, 1996 (6) SCC 62, 1996 SCFBRC 533, (1997) 1 BANKLJ 228, (1997) 1 CIVLJ 20, (1997) 1 LANDLR 134, (1997) 1 MAH LJ 566, (1997) 1 MPLJ 275, 1997 ALL CJ 1 224, (1996) 4 CURCC 19, (1996) 4 ICC 145, (1996) 9 JT 95 (SC), (1997) 1 CTC 127 (SC), (1997) 6 SCALE 300, 1997 (6) SCC 765, (1997) LACC 28, 1997 SCC (L&S) 1584

Author: K. Ramaswamy

Bench: K. Ramaswamy

PETITIONER:

ABDUR RAHMAN & ORS

Vs.

RESPONDENT:

ATHIFA BEGUM & ORS

DATE OF JUDGMENT: 28/08/1996

BENCH:

K. RAMASWAMY, K. VENKATASWAMY

ACT:

HEADNOTE:

JUDGMENT:

O R D E R Leave granted.

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 with which the High Court should have been well-advised not to indulge in at the stage 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.