

ABDUR RAHMAN & ORS
v.
ATHIFA BEGUM AND ORS.

AUGUST 30, 1996

[M.M. PUNCHHI AND K.T. THOMAS, JJ.]

Code of Civil Procedure, 1908 :

Order 41 Rule 17 CPC—Appeal—Appellant's counsel absent—High Court adverted to merits of the case—Recorded that all relevant aspects of the matter taken into account and no ground available for interference with the decision of the Trial Court—On appeal, held : High Court ought not have dismissed the appeal on merits—It has transgressed the limit and hence its order set aside—Matter remitted back to its file for fresh disposal in accordance with law.

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 11460 of 1996.

From the Judgment and Order dated 26.3.95 of the Karnataka High Court in F.A.R.F.A. No. 476 of 1992.

R.S. Massey Verma and Shakil Ahmed Syed for the Appellants.

S.S. Naganand and R.P. Wadhvani for the Respondents.

The following Order of the Court was delivered :

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

A 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.

B

G.N.

Appeal allowed.