

observations in the judgment above-said which would lend support to the argument on behalf of the respondents. With the greatest deference to the learned Single Judge in this respect if the decision is to be interpreted to mean that the Employees Insurance Court has no jurisdiction to decide matters pertaining to Special Contribution under section 73A then I would respectfully dissent from such a view.

(10) For the foregoing reasons this appeal succeeds and is allowed. The case is remanded to the Court below for a decision on the application made by the appellants on merits.

K. S. K.

APPELLATE CIVIL

Before Gopal Singh, J.

MIAN MOHINDER SINGH,—*Appellant*

versus

PALLA SINGH,—*Respondent.*

Second Appeal from Order N. 9 of 1971.

April 30, 1971.

High Court Rules and Orders, Volume I, Chapter 1-K—Rule 4—Proceedings adjourned due to the absence of the Presiding Officer—Party to the proceedings failing to appear on the adjourned date—Such proceedings—Whether can be dismissed in default.

Held, that adjournment of a proceeding to another date under Rule 4 in Chapter 1-K of the High Court Rules and Orders, Volume I, does not imply that a party to that proceeding must appear on that date and if the party does not appear, the proceedings can be dismissed in default of appearance. Under that rule, a proceeding stands adjourned to the next date of a working day for the limited purpose of the passing of an order by the Court fixing the next date of hearing and for ascertainment of that date by the parties or their counsel. If either the parties or their counsel do not appear on the date to which a proceeding stands adjourned under Rule 4 to the next date, the Court even in the absence of appearance on behalf of the parties or their counsel on that date has got to fix another date as the date of hearing and to issue a notice to the parties or their counsel

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intimating to them about the next date of hearing fixed by the Court. Hence an appeal cannot be dismissed in default of appearance on behalf of the appellant on a date to which the proceeding was adjourned by a note recorded by the Reader of the Court on account of the Presiding Officer of the Court being on leave. (Para 3).

Second Appeal from the order of the Court of Shri S. S. Sodhi, Additional District Judge, Hoshiarpur, dated the 14th July, 1970, affirming that of Shmt. Harmohinder Kaur, Sub-Judge 1st Class, Hoshiarpur, dated the 26th March, 1969, dismissing the application under section 151 of the Civil Procedure Code.

MALUK SINGH, ADVOCATE, for the appellant

GUR RATTAN PAL SINGH, ADVOCATE, for the respondent.

JUDGMENT

Gopal Singh, J.—(1) This is appeal by Mian Mohinder Singh against Palla Singh from the order of Shri S. S. Sodhi, Additional District Judge, Hoshiarpur, dated July 14, 1970 refusing to restore the appeal filed by the appellant dismissed on March 30, 1970 in default of appearance on behalf of the appellant.

(2) The suit of the appellant was dismissed by the trial Court on March 26, 1969. The appellant preferred an appeal from the order of dismissal of the suit. The appeal was fixed for hearing by the lower appellate Court for March 28, 1970. On that date, the Presiding Officer of the Court was on leave. As provided in Rule 4 in Chapter 1-K of the High Court Rules and Orders, Volume I, the Reader of the Court adjourned the appeal to the next working day, namely, March 30, 1970. No one having appeared on behalf of the appellant on that day, the appeal was dismissed in default of appearance. An application for the *ex parte* order of dismissal being set aside and the appeal being reheard was made on behalf of the appellant. The respondent contested that application. On construction of the above referred to Rule 4, the lower appellate Court took the view that it was obligatory on the appellant to appear in Court and to argue the appeal on March 30, 1970, to which date the appeal automatically stood adjourned under that rule and dismissed the application.

(3) The view taken by the lower appellate Court about the scope of Rule 4 is erroneous and untenable. Adjournment of a

proceeding to another date under Rule 4 does not imply that a party to that proceeding must appear on that date and if he does not appear, the appeal could be dismissed in default of appearance. Under that rule, a proceeding stands adjourned to the next date of a working day for the limited purpose of the Court fixing the next date of hearing and for ascertainment of that date by the parties or their counsel. If either the parties or their counsel do not appear on the date, to which a proceeding stood adjourned under Rule 4 to the next date, the Court even in the absence of appearance on behalf of the parties or their counsel on that date has got to fix another date as the date of hearing and to issue a notice to the parties or their counsel intimating to them about the next date of hearing fixed by the Court. Moreover, it was as a result of note recorded by the Reader of the Court on March 28, 1970, that the appeal stood adjourned to March 30, 1970. It is the Presiding Officer of the Court, who had to pass an order on March 30, 1970 fixing thereafter a date of hearing in the appeal. No such order was passed. There is no warrant for the appeal being dismissed in default of appearance on behalf of the appellant on March 30, 1970. The order passed by the lower appellate Court dismissing the appeal on March 30, 1970 is not maintainable.

(4) For the foregoing reasons, I allow the appeal and set aside the order of the lower appellate Court dismissing the appeal in default of appearance on behalf of the appellant. The case is remanded to that Court to decide it according to law. There will be no order as to costs.

(5) The counsel for the parties have been intimated that the parties or their counsel shall put in appearance before the lower appellate Court on May 21, 1971.

R. S. G.

REVISION CRIMINAL

Before S. S. Sandhawalia, J

THE STATE,—Petitioner

versus

RAGHBIR SINGH,—Respondent.

Criminal Revision No. 148-R of 1968.

April 30, 1971.

The Probation of Offenders Act (XX of 1958)—Section 11(2)—Right of appeal under.—Whether available to the State—Code of Criminal Procedure