

Prithvi Raj he was guilty of these charges. When he appeal-
 Bali ed to the Inspector-General of Police, his appeal
 v. was carefully considered and the Inspector-
 The State of General wrote a lengthy order in which he discus-
 Delhi sed the petitioner's case from all aspects. In a
 and others case of this type I would not be prepared to exer-
 Khosla, J. cise the extraordinary powers by Article 226 of
 the Constitution.

I would, therefore, dismiss this petition with costs.

Falshaw, J. FALSHAW, J.—I agree.

REVISIONAL CIVIL

Before Bhandari, C. J.

Mst. DHAPAN,—Petitioner

v.

RAM SARAN AND OTHERS,—Respondents

Civil Revision No. 180 of 1955.

1956

Dec. 14th

High Court Rules and Orders, Volume I, Chapter 1-K, para 4—Object and Scope of—Date of hearing declared a holiday—Appeal taken up next day and dismissed in default—Order of dismissal for default, whether justified—Code of Civil Procedure (Act V of 1908), Order 41, rules 17 and 19.

Held, that rule 4 appears to provide that if the presiding officer of the Court is unable to attend Court on a particular day all cases fixed for that day shall be deemed to have been automatically adjourned to the next working day and that the parties or their counsel shall attend Court on the next day, so that the next date of the hearing should be fixed in their presence.

Held further, that where the date fixed for hearing of a case happens to be a holiday, the Court is in no way justified in taking up the case on the following day and in

passing any order to the prejudice of any of the absent parties without duly serving upon him a fresh notice of the hearing.

Mst. Umai-ul-Mughni Begum v. Salig Ram and others (1), and *Raghunandan Lohar v. Bachan Singh and others* (2), relied upon.

Petition under section 115, Civil Procedure Code, for revision of the order of Shri A. S. Gilani, Senior Sub-Judge, invested with enhanced appellate powers, Gurgaon, dated the 11th March, 1955, dismissing the petitioner's application for restoration of appeal.

H. R. SODHI and DALJIT SINGH, for Petitioner.

H. L. SARIN, for Respondent.

JUDGMENT.

BHANDARI, C. J. This petition raises the question whether the petitioner is entitled to the restoration of her appeal which was dismissed in default. Bhandari, C.J.

The petitioner who had preferred an appeal to the Court of the Senior Sub-Judge at Gurgaon, failed to appear in Court on the 28th August, 1954, when it was to come up for hearing. Fortunately, for her 28th August, was declared a holiday and all cases which were fixed for that date were automatically adjourned to the 30th August, 1954, which was the next working day. The petitioner was not present in Court on that day either in person or through counsel and the learned Senior Sub-Judge accordingly dismissed the appeal in default. The petitioner is dissatisfied with the order of dismissal and has come to this Court in revision under section 115 of the Code of Civil Procedure.

(1) A.I.R. 1915 Lah. 476

(2) A.I.R. 1940 Pat. 475

parties, their counsel and the witnesses of the Mst. Dhapan fresh dates fixed.

It may be that the petitioner in the present case did not appear in Court on the 30th August, 1954, but it must be remembered that nothing was to be done that day. The parties were to be called and the case was to be set down for hearing on another date. The Senior Sub-Judge, however, decided to take up the appeal and to dismiss it in default. It seems to me, therefore, that the learned Senior Sub-Judge did not comply with the provisions of the rule which required him to adjourn the hearing of the appeal to another date. It has been held repeatedly that where the date fixed for hearing a case happens to be a holiday, the Court is in no way justified in taking up the case on the following day and in passing any order to the prejudice of any of the absent parties without duly serving upon him a fresh notice of the hearing. *Mst. Umai-ul-Mughni Begum v. Salig Ram and others* (1), and *Raghunandan Lohar v. Bachan Singh and others* (2).

v.
Ram Saran
and others

Bhandari, C. J.

For these reasons, I would accept the petition, set aside the order of the lower appellate Court and direct that the appeal be restored and heard on merits. There will be no order as to costs. The parties will appear before the Senior Sub-Judge on the 15th January, 1957.

APPELLATE CIVIL

Before Kapur and Passey, JJ.

UNION OF INDIA,—Defendant-Appellant

v.

SARDARNI HARBANS KAUR AND OTHERS,—Respondents

Regular First Appeal No. 135 of 1950.

Public carrier—Railway—Persons travelling contrary to bye-law or a contract express or implied, whether a

1956

(1) A.I.R. 1915 Lah. 476
(2) A.I.R. 1940 Pat. 475