

Hon' Mr D.K. Agrawal, J.M.

Hon' Mr K. Obayya, A.M.

15/1/90

Shri Lalji Sinha counsel for the applicant is present. None appears for the respondent no.1. The facts of this case are that<sup>a</sup> Civil Suit No. 317/82 was filed and decided ex-parte by 5th Addl Munsif, Mirzapur, by an order dated 8.5.85. An application was made by the defendant for setting aside the ex-parte decree vide misc. appl.No. 37/85. The application was rejected by the 5th Addl Munsif, Mirzapur by an order dated 21-2-86. An appeal (beyond time) was filed before the learned District Judge, Mirzapur which was registered as Misc. Case No. 140/86. The delay was not condoned, as such, the application/appeal was rejected time barred vide order dated 4/5/87. Thereafter, the present application has been filed, seeking three reliefs, firstly, setting aside the order of the District Judge dated 4.5.87 passed in misc. case no. 140/86; secondly, setting aside the ex-parte decree passed by the learned Munsif in Civil Suit No. 317/82 dated 8.5.85 and thirdly, setting aside the order passed by the learned Munsif in misc. case no. 37/85 dated 21.2.86 refusing to set aside the ex-parte decree.

It is a matter to be debated upon as to whether the reliefs, as sought by the applicant, are or not within the jurisdiction of this Tribunal.

Let the learned counsel for the respondent no.1, file counter affidavit within three weeks hereof, to which the applicant may file rejoinder within one week thereafter. List this case before the Dy Registrar(J) on 2-3-90 for listing it for further orders/hearing as the case may be according to its serial number.

The Registrar, in the meantime would summon the record of<sup>(a)</sup> Civil Suit No. 317/82 decided by 5th Addl Munsif Mirzapur on 8.5.85; (b) Misc. Case No. 37/85 decided by learned 5th Addl Munsif, Mirzapur by an order dated 21.2.86; and (c) Misc. Case No. 140/86 decided on 4.5.87 by the District Judge, Mirzapur.

A.M.

J.M.

(sns)