

**Mohan Lal Vs. Sohan Lal**

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**Court :** Allahabad

**Decided On :** Sep-28-1938

**Reported in :** AIR1939All77

**Appellant :** Mohan Lal

**Respondent :** Sohan Lal

**Judgement :**

ORDER

**Mulla, J.**

1. This is an application in revision under Section 25, Small Cause Courts Act. The applicant here was the plaintiff in the Court below. He instituted a suit on 4th March 1937 against the opposite party Sohan Lal to recover a certain amount on the basis of a running account. The opposite party filed a written statement on 14th July 1937 and the case was fixed for final hearing on 26th November 1937 after some adjournments in the meantime, for certain reasons with which this Court is not concerned. On that date it appears that an issue was framed in the case and the plain, tiff was examined. The case was then adjourned to the next day, that is 27th November 1937, and on that date the evidence of the plaintiff and of a witness produced by him was recorded. The opposite party and his counsel were admittedly present on 26th November 1937; but, on the next day when the case was called up no one appeared on behalf of the opposite party, with the

result that the Court proceeded to pass an ex parte decree. It appears that immediately afterwards the opposite party appeared in Court and made an application purporting to be under Section 151, Civil P.C. praying for an order to set aside the ex parte decree. No cash deposit was made when this application was presented, nor was any security filed in accordance with the direction of the Court upon a previous application as required by Section 17, Small Cause Courts Act.

2. It is evident that in the circumstances in which the application was made the provisions of Section 17 could not possibly have been complied with immediately. The Court treated this application as one under Order 9, Rule 13 for an order to set aside the ex parte decree, and the opposite party was asked to explain why he had failed to carry out the provisions of Section 17. The matter came up before the Court on 16th December 1937 and the learned Small Cause Court Judge directed the opposite party to furnish a personal bond. It was contended by the learned Counsel for the applicant that all this proceeding took place without any notice having been given to his client. But it appears from the record that the applicant's counsel was present when the opposite party made his application on 27th November 1937 immediately after the passing of the ex parte decree. It appears farther that the application was immediately shown to the applicant's counsel who put his signature thereon apparently in token of the fact that he had received notice of it. On 20th December 1937, the learned Small Cause Court Judge accepted the security bond filed by the opposite party and fixed 6th January 1938 for hearing the application for restoration of the sit and wetting aside of the ex parte decree. The case was however taken up on 3rd December, though the reason for this change in date does not appear from the record. On that date the learned Small Cause Court Judge granted the application and sot aside the ex parte decree. Hence this application in revision.

3. The learned Counsel for the applicant strenuously argued that the whole procedure adopted by the learned Small Cause Court Judge in this case was irregular, and particular stress was laid upon the point that he had no jurisdiction to entertain the opposite party's application for an order to set aside the ex parte decree when the mandatory provisions of Section 17, Small Cause Courts Act,

relating to the deposit of security had not been complied with. The argument on behalf of the opposite party is that the provisions of Section 17, Small Cause Courts. Act, were substantially complied with because security was deposited by the opposite party in accordance with the Court's, direction, within the period of limitation. Reliance was placed in support of this contention on certain decisions of this Court, dealing with Section 17 of the Act prior to its amendment by Act No. 9 of 1935. The material portion of Section 17 as it stands after the recent amendment runs as follows:

Either deposit in the Court the amount due from him under the decree or in pursuance of the judgment, or give such security for the performance of the decree or compliance with the judgment as the Court may, on a previous application made in this behalf, have directed.

4. In order to appreciate the argument it would be instructive to quote the corresponding portion of Section 17, as it stood before the amendment. It runs as follows:

Either deposit in the Court the amount due from him under the decree or in pursuance of the judgment, or give security to the satisfaction of the Court for the performance of the decree or compliance with the judgment, as the Court may direct.

5. Some stress was laid by the learned Counsel for the opposite party on a decision of this Court in the Full Bench case in *Ram Bharose v. Ganga Singh* : AIR1931 All727 . A perusal of that case will however show that the facts which the learned Judges had before them were essentially different from those that are now before me. I do not think, therefore, that I can derive any assistance from the case relied upon by the learned Counsel. To my mind, it is perfectly clear that Section 17, as it now stands, contains a mandatory provision to the effect that an applicant for an order to set aside a decree passed ex parte must do one of two things at the time of presenting his application, that is he must either deposit the amount due from him under the decree, or give such security for the performance of the decree as the Court may, on a previous application made by him in this behalf, have directed. There can be little doubt in this case that this mandatory provision was

not complied with, and I would therefore concede that the learned Small Cause Court Judge had no jurisdiction to entertain the application made by the opposite party on 27th November 1937.

6. The question however remains whether this Court is bound to interfere with the order passed by the learned Small Cause Court Judge simply because it was beyond his jurisdiction. The power of interference which this Court has under Section 25, Small Cause Courts Act, is purely discretionary, and I do not think that the mere fact that an order passed by a Small Cause Court is either illegal or without jurisdiction necessarily justifies interference by this Court. The real test is whether any substantial injustice has been done by the order complained against. In support of this view, I would refer, in the first place, to a Full Bench decision of this Court in *Muhammad Bakar v. Bahal Singh* (1891) 13 All. 277. In that case the Full Bench laid down the following principles:

Section 25, Provincial Small Cause Courts Act, was not intended to give in effect a right of appeal in all Small Cause Court cases, either on law or fact. The revisional powers given by that Section are only exercisable where it appears that some substantial injustice to a party to the litigation has directly resulted from a material misapplication or misapprehension of law or from a material error in procedure.

7. That was not however a case in which the order passed by the Small Cause Court Judge was without jurisdiction. There is however another decision of this Court in the case in *Tursi Ram v. Meghraj Basdeo* : AIR1933 All145 , which is still more to the point. In that case a suit had been brought against two executants of a pronote, and before the Court gave its judgment a reference was made to arbitration at the instance of the plaintiff and only one of the two defendants. The reference was obviously invalid and the Court had therefore no jurisdiction to refer the matter to arbitration. The learned Judge of this Court, however, in dealing with the case in revision observed as follows:

I am satisfied that in all revisional applications under Section 25 the High Court must be satisfied, before it interferes, that some substantial injustice has been done. In other words, that there are merits in the application apart from technicality. In this case the application has no merits whatever.

8. In my view, the present case is exactly of the same character. The applicant is relying purely upon a technical breach of the provisions of Section 17, Small Cause Courts Act, It cannot be suggested that the order passed by the learned Small Cause Court Judge by which an ex parte decree has been sot aside has done substantial in. justice to any party. I am not therefore inclined to interfere in revision, and consequently dismiss the application with costs. The stay order is discharged.

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