

Khiali Ram Vs. Bucha Ram

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Court : Allahabad

Decided On : Feb-02-1936

Reported in : AIR1936All371

Appellant : Khiali Ram

Respondent : Bucha Ram

Judgement :

ORDER

Allsop, J.

1. This is an application for ex-tension of time for depositing a certain sum of money. The applicant was one of three defendants in a suit in a Court of Small Causes. He was not present when the suit was heard and decided but the other two co-defendants were present. The suit was for a sum of money and a decree was passed. The applicant then applied for a review of judgment although I am told that at the same time the application was so framed that it might in the alternative have been treated as an application for setting aside an ex parte decree. His application was rejected. He then came to this Court in revision and obtained an order that his application should be treated as an application for setting aside an ex parte decree and that the Court below should issue notice to the opposite party to show cause why the decree as against the applicant should not be set aside and the suit restored to the pending file. This order was subject to

the condition that the applicant should deposit in the Court below the full decretal amount within one month and within the same period pay a sum of Rs. 25 to the opposite party. The money was not deposited within the period of one month and the applicant now asks that the period should be extended because he has already deposited the full sum due under the decree. It is urged against the application that the applicant will be going against the provisions of Section 17, Provincial Small Cause Courts Act, in that he deposited the money at a time after he put in his application. I am assured by applicant's counsel that security was filed at the time when the application was made. If that is so, the provisions of Section 17 of the Act were complied with, and in any case I am not in this application to consider whether those provisions were complied with or not. If they were not complied with and that is a ground for rejecting the application to set aside the ex parte decree the learned Judge of the Court of Small Causes will consider the question and decide it according to law.

2. The other objection taken is that it was part of the decree of this Court that the amount should be deposited within one month from the date of the order, i.e. from 3rd January 1935. I do not consider that the period was an essential part of the decree. This Court intended that the matter should not be re-opened except upon terms and one of the terms was that there should be a deposit of the decretal amount in Court. The period itself was not an essential part. It has been explained that the delay in making the deposit was due to the fact that the record from this Court was not returned to the Court below. In these circumstances, as the money has already been deposited in accordance with the essential condition which this Court laid down, it seems to me that the proceedings should be re-opened and a notice should issue in accordance with the order of this Court. I therefore allow the application and extend the period as prayed. The Court below will issue notice to the opposite party to show cause why the decree as against the applicant should not be set aside and the suit restored to the pending file and be heard and determined according to law. The coats of this application will be costs in the suit.