

Jai Ram Vs. Purna

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Court : Allahabad

Decided On : Jun-13-1916

Reported in : AIR1916All170(2); 35Ind.Cas.625

Judge : Rafique, J.

Appellant : Jai Ram

Respondent : Purna

Judgement :

Rafique, J.

1. This is an application in revision from the order of the Munsif of Sambhal exercising the jurisdiction of a Small Cause Court Judge. It appears that the applicant had brought a suit for the recovery of the rent of a house in the Court of the Munsif and had obtained an ex parte decree on the 22nd November 1915. On the 1st December 1915, the opposite party made an application to the learned Munsif asking for the setting aside of the ex parte decree. The decretal amount or security for it was not filed with the application as required by Section 17 of the Small Cause Courts Act. In fact the decretal amount was not deposited till some time in January, long after the application for setting aside the ex parte decree had been made. The plaintiff-applicant objected on the date of hearing, on the ground that the application of the defendant could not be entertained as the decretal amount or the security for it had not been given on the date of the making of the

application. The learned Munsif overruled (he objection and allowed the defendant's application and set aside the ex parte decree. The plaintiff has come up in revision to this Court and contends that the order of the lower Court is erroneous. No one appears for the opposite party to oppose the application.

2. It has been ruled by a Division Bench of this Court that Section 17 of the Provincial Small Cause Courts Act of 1887 requires that at the' time of presenting his application the applicant must either deposit in Court the amount of the decretal amount or give security as provided for by the section, so that the deposit of the decretal amount or the furnishing of the security is a condition precedent to the entertainment of an application to set aside an ex parte decree: Jagan Nath v. Chet Ram 28 A. 470 : 3 A.L.J. 318 : A.W.N. (1906) 93. The same view was taken in the case of Nanhe Mal v. Harjas 5 A.L.J. 295 : A.W.N. (1908) 141. In the present case it appears that the application of the defendant praying to set aside the ex parte decree was not accompanied by the decretal amount or a security-bond for it. The order of the learned Munsif setting aside the ex parte decree was, therefore, wrong. The application is allowed with costs and the order of the lower Court setting aside the ex parte decree is reversed.