

Prem Chandra Mishra Vs. iind Additional District Judge and ors.

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Court : Allahabad

Decided On : Sep-11-2008

Reported in : 2008(4)AWC3671

Judge : V.K. Shukla, J.

Appellant : Prem Chandra Mishra

Respondent : iind Additional District Judge and ors.

Disposition : Petition dismissed

Judgement :

V.K. Shukla, J.

1. Prem Chandra Mishra, landlord of the premises in question has filed present writ petition questioning the validity of the order dated 30.10.1995 passed by II Additional District Judge, Etah allowing Revision No. 6 of 1994 filed by the tenant Satya Prakash Sharma by setting aside order dated 11.4.1994 passed by Judge Small Causes/Additional Civil Judge, Etah in S.C.C. Misc. Case No. 1 of 1993 and directing for fresh decision in accordance with law on the question of compliance of provisions of Section 17 of Provincial Small Cause Courts Act, 1887.

2. Brief background of the case is that suit for arrears of rent and ejectment was filed by the petitioner against the tenant concerned Satya Prakash Sharma being

J.S.C.C. Suit No. 1 of 1993. In the said proceedings tenant entered appearance and filed his written statement and also deposited Rs. 5,200 on the first date of hearing. On 27.4.1993 an order was passed to proceed ex parte against the tenant concerned fixing 17.5.1993 for final hearing. On 17.5.1993 an application was moved on behalf of petitioner seeking permission from court for filing affidavit in the shape of evidence on 17.5.1993. Application was moved by tenant for recalling of the order dated 27.4.1993. On the said application which was moved on 17.5.1993 for recalling of the order dated 27.4.1993, next date fixed was 22.5.1993. On 22.5.1993 application moved on behalf of tenant was rejected and ex parte decree was passed for eviction. Tenant in question moved an application under Order IX, Rule 13, C.P.C read with Section 151 of C.P.C on 24.5.1993. Said application in question was objected to by petitioner Prem Shanker Mishra and it was also contended that application moved is not in compliance with the proviso of Section 17 of Provincial Small Causes Court Act, and compliance ought to have been made within thirty days. Satya Prakash Sharma on 25.2.1994 moved an application, 21C stating therein that he had already deposited the entire arrears of rent, costs of the suit and interest in J.S.C.C. suit much earlier before passing of ex parte decree, and some amount has been deposited under Order XV, Rule 5 of C.P.C. This application was objected to by petitioner. Judge Small Causes rejected the said application of tenant. Tenant in question preferred J.S.C.C. Revision No. 6 of 1994 and Additional District Judge, Etah has set aside the order passed by Judge Small Causes and remitted the case back to be decided afresh in accordance with law. At this juncture present writ petition has been filed.

3. Counter-affidavit has been filed contending therein that the decision which has been taken is rightful decision in the fact of the present case and as matter has been remanded back as such no interference be made.

4. Rejoinder-affidavit has been filed disputing the averments mentioned in the counter-affidavit and taking categorical stand that application which has been filed for setting aside ex parte decree was illegal, incompetent and not maintainable under the First Proviso to Section 17 of Provincial Small Cause Courts Act 1887, as such orders passed by Revising Authority is liable to be quashed.

5. After pleadings mentioned above have been exchanged present writ petition has been taken up for final hearing and disposal with the consent of the parties.
6. Sri H.M. Srivastava, advocate appearing for petitioner alongwith Sri Neeraj Srivastava, advocate contended with vehemence that in the present case application which has been moved on behalf of the petitioner under Order IX, Rule 13, C.P.C on the face of it is not at all competent and maintainable as condition to make deposit of amount due under the decree or giving security imposed by proviso to Section 17(1) of the Act is mandatory and same has not at all been complied with on admitted position and revisional court has totally transgressed and over stepped its jurisdiction has misdirected itself while remanding the matter and such action is in the teeth of the judgment of Hon'ble Apex Court in the case of *Kedarnath v. Mohan Lal Kesarwari and Ors.* : [2002]1SCR144 , as such writ petition in question deserves to be allowed.
7. Countering said submission Sri Swapnil Kumar, advocate on the other hand contended that purpose for which decretal amount or security in lieu thereof is required to be deposited as condition precedent to entertain an application for setting aside ex parte decree passed by Judge, Small Causes is clear that so long application for setting aside the ex parte decree is not disposed of the decretal amount or security should be at the disposal of the Court so that in case application for setting aside ex parte decree is dismissed the decree may be satisfied from the amount deposited or from the security furnished by the judgment debtor and here undisputed position is that entire decretal amount which has been decreed by Judge Small Causes Court is already lying with the Judge Small Causes, as such compliance of First Proviso to Section 17(1) of the Provincial Small Cause Courts Act, 1887 stood fulfilled in this background revisional court has rightly remitted the matter back to decide in the light of the said finding as such no interference be made and further the judgment cited by the petitioner cannot be relied upon blindly and even little difference in facts or additional facts may make a lot of difference in the precedential value of a decision and here distinguishable feature of the case are there as such judgment cited in the case of *Kedarnath v. Mohan Lal Kesarwari and Ors.* : [2002]1SCR144 , will not at all come to the rescue of the petitioners, and writ petition as it has been framed and drawn

is liable to be dismissed.

8. In order to appreciate respective arguments which has been advanced Section 17 of Provincial Small Cause Courts Act, 1887 is being looked into.

Section 17. Application of the Code of Civil Procedure-(1) [The procedure prescribed in the Code of Civil Procedure, 1908 (5 of 1908) shall save in so far as is otherwise provided by the Code or by this Act,] be the procedure followed in a Court of Small Causes, in all suits cognizable by it and in all proceedings arising out of such suits:

Provided that an applicant for an order to set aside a decree passed ex parte or for a review of judgment shall, at the time of presenting his application, 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 by him in this behalf have directed](2) Where a person has become liable as surety under the provision to Sub-section (1) the security may be realised in manner provided by Section (145) of the Code of Civil Procedure, (1908) (5 of 1908).

9. A bare perusal of provision quoted above would go to show that procedure provided for in Code of Civil Procedure has to be followed by Judge, Small Causes in all suits cognizable by it and in all proceedings arising out of such suits. Proviso has been added that an applicant for an order to set aside a decree passed ex parte or for a review of judgment shall, at the time of presenting his application, 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 by him in this behalf have directed. There are two options open to tenant at the point of time of moving application under Order IX, Rule 13, C.P.C for setting aside ex parte decree, for making said application maintainable (i) deposit in Court the amount due from him under decree (ii) or alternatively by prior application request for furnishing security.

10. The provision as contained under First Proviso to Section 17(1) of the Provincial Small Cause Courts Act, 1887 has been subject-matter of consideration in the case of Kedarnath v. Mohan Lal Kesarwari and Ors. : [2002]1SCR144 . In the said case Hon'ble Apex Court has taken the view that application made without complying with condition of making deposit of due under decree or giving security imposed by proviso to Section 17(1) is mandatory and said condition not being complied application is incompetent and not maintainable. Relevant paragraphs 1, 2, 5, 8 and 9 of the said Judgment is being extracted below:

1. The landlord-appellant filed a suit for recovery of arrears of rent and for eviction against the tenant-respondents on the ground available under Clause (a) of Sub-section (2) of Section 20 of U.P. Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972, hereinafter U.P. Urban Buildings Act, for short. A suit of the nature filed by the appellant being triable by a Court of Small Causes, as provided by the U.P. Civil Laws Amendment Act, 1972 was filed in the Court of Small Causes, Allahabad. On 9.8.1996, the suit came to be decreed ex parte. The decree directed the tenant-respondents to pay an amount of Rs. 8,500 as pre-suit arrears of rent and a further amount calculated at the rate of Rs. 250 per month from the date of institution of suit to the date of recovery of possession. A decree for eviction was also passed. The decree was put to execution and on 21.2.1998 the decree-holder obtained possession over the suit premises with police help. The Court Amin certified the delivery of possession to the executing court. On 26.2.1998, the tenant-respondents moved an application under Order IX, Rule 13 of the C.P.C. seeking setting aside of the ex parte decree. Neither the amount due under the decree was deposited nor an application was filed seeking direction of the Court to give security for the performance of the decree in lieu of depositing the decretal amount. On 14.10.1998, arguments were heard on the application under Order IX, Rule 13 of the C.P.C. The Court appointed 16.10.1998 for orders.

2. It appears that during the course of hearing the appellant decree-holder pointed out to the Court that the application seeking setting aside of the ex parte decree was not maintainable and was liable to be dismissed in limine for non-compliance with proviso to Section 17 of the Provincial Small Cause Courts Act, 1887 (hereinafter, 'the P.S.C.C. Act' for short). On 15.10.1998, the tenant-respondents

filed an application praying that they may be permitted to furnish security for payment of decretal amount. The reason assigned for failure to deposit the amount due under the decree or to furnish security along with the application seeking setting aside of the ex parte decree is somewhat oscillating. At one place it is stated that their advocate had never advised them to deposit the decretal amount as the advocate himself was not aware of the provision. Then, at another place, it is stated that the rent was already paid to the landlord decree-holder and there were no arrears required to be deposited. At yet another place it is stated that their advocate had advised them that on the application seeking setting aside of the ex parte decree being allowed and the suit being restored to file, on the first date of hearing the tenant has to deposit the rent in arrears which would be done at that stage only. Vide order dated 15.11.1998, the learned Judge, Small Causes rejected the application filed by the tenant-respondent forming an opinion that ignorance of law was not excusable and the application under Order IX, Rule 13 of C.P.C. filed without complying with proviso to Section 17 of the P.S.C.C. Act was not maintainable.

5. It is not disputed at the Bar that such a suit as was filed by the landlord-appellant is, in the State of U.P., to be heard and disposed of by a Court of Small Causes and hence would be governed by the provisions of the P.S.C.C. Act. Section 17 thereof provides as under:

17. Application of the Code of Civil Procedure.-(1) The procedure prescribed in the Code of Civil Procedure, 1908, shall save insofar as is otherwise provided by that Code or by this Act, be the procedure followed in a Court of Small Causes, in all suits cognizable by it and in all proceedings arising out of such suits:

Provided that an applicant for an order to set aside a decree passed ex parte or for a review of judgment shall, at the time of presenting the application, 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 by him in this behalf, have directed.(2) Where a person has become liable as surety under the proviso to Sub-section (1), the security may be realised in manner provided by

Section 145 of the Code of Civil Procedure, 1908.

It is relevant to note that the proviso to Sub-section (1) of Section 17 has undergone a material change through an amendment brought in by Act No. 9 of 1935. Earlier there were the words 'security to the satisfaction of the Court for the performance of the decree or compliance with the judgment, as the Court may direct' which have been deleted and substituted by the present words '-such security for the performance of the decree or compliance with the judgment as the Court may, on a previous application made by him in his behalf, have directed.' The Statement of Objects and Reasons for the 1935 amendment was set out as under:

The Act is designed to remove certain doubts which have arisen in the interpretation of the proviso to Sub-section (1) of Section 17 of the Provincial Small Cause Courts Act, 1887. As the section stands, an applicant is required to give security to the satisfaction of the Court at the time of presenting his application. It follows that, in order to ascertain what security satisfies the Court, the applicant must already have made an application in that behalf. There is some doubt whether the words 'as the Court may direct' apply to the deposit of the whole decretal amount as well as to the giving of approved security. The Act is intended to make it clear that the preliminary application to ascertain what security will satisfy the Court must be made and decided before the substantive application for the order to set aside the decree, and that it always is open to the applicant to adopt the alternative course of depositing the total decretal amount. (Vide Statement of Objects and Reasons, Gazette of India, 1935, Pt. V, p. 90).⁸ A bare reading of the provision shows that the Legislature have chosen to couch the language of the proviso in a mandatory form and we see no reason to interpret, construe and hold the nature of the proviso as directory. An application seeking to set aside an ex parte decree passed by a Court of Small Causes or for a review of its Judgment must be accompanied by a deposit in the Court of the amount due from the applicant under the decree or in pursuance of the judgment. The provision as to deposit can be dispensed with by the Court in its discretion subject to a previous application by the applicant seeking direction of the Court for leave to furnish security and the nature thereof. The proviso does not provide for the extent

of time by which such application for dispensation may be filed. We think that it may be filed at any time up to the time of presentation of application for setting aside ex parte decree or for review and the Court may treat it as a previous application. The obligation of the applicant is to move a previous application for dispensation. It is then for the Court to make a prompt order. The delay on the part of the Court in passing an appropriate order would not be held against the applicant because none can be made to suffer for the fault of the Court.

9. In the case at hand, the application for setting aside ex parte decree was not accompanied by deposit in the Court of the amount due and payable by the applicant under the decree. The applicant also did not move any application for dispensing with deposit and seeking leave of the Court for furnishing such security for the performance of the decree as the Court may have directed. The application for setting aside the decree was therefore incompetent. It could not have been entertained and allowed.

11. In the case of *Kedarnath v. Mohan Lal Kesarwari and Ors.* : [2002]1SCR144 , facts were that ex parte decree was passed on 9.8.1996. Said decree was put to execution on 21.2.1998 and on 26.2.1998 an application under Order IX, Rule 13 of C.P.C. seeking setting aside of the ex parte decree was moved. Neither the amount due under the decree was deposited nor an application was filed seeking direction of the Court to give security for the performance of the decree in lieu of depositing the decretal amount. On 14.10.1998, arguments were heard on the application under Order IX, Rule 13 of the C.P.C. The Court appointed 16.10.1998 for orders. During the course of hearing it was pointed out by the appellant to the Court that the application seeking setting aside of the ex parte decree was not maintainable and was liable to be dismissed in limine for non-compliance with proviso to Section 17 of the Provincial Small Cause Courts Act, 1887. On 15.10.1998, the tenant-respondents filed an application praying that they may be permitted to furnish security for payment of decretal amount and said application was rejected, in the background as application for setting aside ex parte decree was not accompanied by deposit in Court of amount due, neither application for furnishing security was so appended amount due payable by applicant under decree, application was held to be incompetent. Hon'ble Apex Court has also

mentioned that in the opinion of the Court proviso does not provide for the extent of time by which such application for dispensation may be filed. As per Court it may be filed at any time up to the time to presentation of application for setting aside ex parte decree or for review and the Court may treat it as a revision application. The obligation of the applicant is to move a revision application for dispensation. It is then for the Court to make prompt order and delay on the part of the Court in passing an appropriate order would not be held against the applicant because none can be made to suffer for the fault of the Court.

12. Thus, judgment of Hon'ble Apex Court is clear on this score that provision of Section 17(1) are mandatory in nature and has to be complied with.

13. Question to be considered is as to whether present case in hand should be disposed of by blindly placing reliance on the said decision quoted above without looking to the facts of the case in hand. At this juncture precedential value of a decision is being looked into.

14. In the Case of Bhavnagar University v. Palitana Sugar Mills Pvt. Ltd. : AIR 2003 SC511 . Hon'ble Apex Court has taken the view that it is well-settled that a little difference in facts or additional facts may make a lot of difference in the precedential value of a decision. Relevant paragraph 59 is as follows:

59. A decision, as is well-known, is an authority for which it is decided and not what can logically be deduced therefrom. It is also well settled that a little difference in facts or additional facts may make a lot of difference in the precedential value of a decision. See Smt. Ram Rakhi v. Union of India and Ors. : AIR2002 Delhi458 ; Delhi Administration (N.C.T. of Delhi) v. Manoharlal AIR 2002 SC 3088 ; Haryana Financial Corporation and Anr. v. Jagdamba Oil Mills and Anr. : [2002]1SCR621 and Dr. Nalini Mahajan etc. v. Director of Income-tax (Investigation) and Ors. : [2002]257ITR123(Delhi) .

15. Hon'ble Apex Court in the case of Bharat Petroleum Corporation Ltd. and Anr. v. N.R. Vairamani and Anr. AIR 2004 SC 4778, took the view that a decision cannot be relied on without disclosing the factual situation. In the same judgment this Court also observed:

'Court should not place reliance on decisions without discussing as to how the factual situation fits in with the fact situation of the decision on which reliance is placed.' Observations of Courts are neither to be read as Euclid's theorems nor as provisions of the statute and that too taken out of the context. These observations must be read in the context in which they appear to have been stated. Judgments of Courts are not to be construed as statutes. To interpret words, phrases and provisions of a statute, it may become necessary for Judges to embark into lengthy discussions but the discussion is meant to explain and not to define. Judges interpret statutes, they do not interpret judgments. They interpret words of statutes ; their words are not to be interpreted as statutes.

16. Hon'ble Apex Court in the case of U.P. State Electricity Board v. Pooran Chandra Pandey Civil Appeal No. 3665 of 2001, decided on 9.10.2007, 2008 (1) AWC 331 (SC), has taken the view that one additional fact may make a lot of difference in the precedential value of a decision. Relevant paragraph 16 of the aforesaid judgment is being quoted below:

We are constrained to refer to the above decisions and principles contained therein because we find that often Uma Devi's case (supra) is being applied by Courts mechanically as if it were a Euclids formula without seeing the facts of a particular case. As observed by this Court in Bhavnagar University (supra) and Bharat Petroleum Corporation Ltd. (supra), a little difference in facts or even one additional fact may make a lot of difference in the precedential value of a decision. Hence, in our opinion, Uma Devi's case (supra) cannot be applied mechanically without seeing the facts of a particular case, as a little difference in facts can make Uma Devi's case (supra) inapplicable to the facts of that case.

17. View to the similar effect has been taken in the case of Dr. Rajveer Singh Dala v. C.D.L. University 2003 (3) ESC 545, that circumstantial flexibility, one additional or different fact may make a world of difference between conclusions in two cases. Disposal of cases by blindly placing reliance on a decision is not proper. The following words of Lord Denning in the matter of applying precedents have become locus classicus:

Each case depends on its own facts and a close similarity between one case and another is not enough because even a single significant detail may alter the entire aspect, in deciding such cases, one should avoid the temptation to decide cases (as said by Cardozo, J.) by matching the colour of one case against the colour of another. To decide therefore, on which side of the line a case falls, the broad resemblance to another case is not at all decisive.

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Precedent should be followed only so far as it marks the path of Justice, but you must cut the dead wood and trim off the side branches else you will find yourself lost in thickets and branches. My plea is to keep the path of justice clear of obstructions which could impede it.

18. The object behind proviso of Section 17(1) of Provincial Small Causes Courts Act, 1887 is that unscrupulous tenants against whom rent is due, who do not appear on the date fixed may not take advantage of not paying rent and thereby causing harassment of the landlord. The purpose of adding this proviso to Section 17 is to protect the interest of landlord from further harassment and to secure and ensure payment of rent and to put tenant to term to legally make said deposits. Idea behind said provision is to strike a balance between rival interests so as to be just to law. In case of ex parte decree tenant has been given liberty to move application under Order IX, Rule 13 of Code of Civil Procedure on the ground provided therein but under proviso to Section 17(1) of Provincial Small Cause Courts Act, 1887 condition has been imposed so that tenant does not take undue advantage for non-appearance and in this background as condition precedent is it has been made obligatory on the part of the tenant to deposit the amount which is due so that in the event an application for setting aside decree is dismissed the decree in question may be satisfied from the amount deposited or from the security furnished by the judgment debtor.

19. Question arising in the present case is that revisional court has recorded finding of fact which has not at all been assailed before this Court that entire amount which is due from tenant under decree qua the same deposit is already there even before passing of decree and once entire amount in question is there

can even in this contingency application under Section 17(1) of Provincial Small Cause Courts Act, 1887 can be dismissed for non-compliance of provision of proviso. Amount in question under Section 20(4) of U.P. Act No. 13 of 1972 is permitted to be deposited in any suit for eviction on the ground mentioned in Clause (a) of Sub-section (2) of Section 20 by the tenant on the first hearing of the suit unconditionally and amount which is already deposited under Sub-section (1) of Section 30 of U.P. Act No. XIII of 1972 is liable to be deducted for enabling tenant to save eviction. Sub-Section (6) of Section 20 clearly provides that any amount deposited by the tenant under Sub-section (4) or under Rule 5 of Order VX of the First Schedule to the Code of Civil Procedure, 1908 shall be paid to the landlord forthwith on his application without prejudice to the parties pleadings and subject to the ultimate decision in the suits. Similarly Sub-section (4) of Section 30 provides that on any deposit which are made under Section 30 the amount In question which has been deposited can be withdrawn on an application made in this behalf and further Sub-section (6) of Section 30 provides that any deposit made, same shall be deemed that the person depositing it has paid it on the date of such deposit to the person in whose favour it is deposited in the case referred to in Sub-section (1) or to the landlord in the case referred to in Sub-section (2). Thus, deposits which are made under Sub-section (4) of Section 20 and under Section 30 of U.P. Act No. 13 of 1972 and under Order XV, Rule 5, C.P.C. are in custody of the Court and said amount in question can at any point of time, be withdrawn by the landlord in question, and are readily available to the landlord.

20. This Hon'ble Court in the case of Mahadeo Singh v. Shesh Narain Pathak 1990 (1) ARC 293, wherein amount in question was deposited under Section 20(4) of U.P. Act No. 13 of 1972 took the view that the purpose for which the decretal amount or security in lieu thereof is required to be deposited as condition precedent is that so long application for setting aside the ex parte decree was not disposed of by court but tenant cannot be asked to take steps for depositing said amount on the second occasion. Relevant paragraphs 7, 8, 9, 10 and 11 are being extracted below:

7. To appreciate the point raised, it may first be seen what is the purpose for which the decretal amount or security in lieu thereof is required to be deposited as

conditions precedent to entertain an application for setting aside the ex parte decree passed by Judge, Small Cause Court. Clearly the purpose is that so long application for setting aside the ex parte decree is not disposed of the decretal amount or security should be at the disposal of the Court, so that in case application for setting aside ex parte decree is dismissed, the decree may be satisfied from the amount deposited or from the security furnished by the judgment debtor. In this connection, observations made in a case in Smt. Krishna Devi v. Shobha Chandra 1981 ALJ 989, can be beneficially noted.

8. The trial court has attached much importance to the fact that the amount in deposit was not an unconditionally deposit as the same was deposited under Section 20(4) of the Act No. 13 of 1972 under protest, challenging the rate of rent. As a matter of fact it is here that the trial court has misdirected itself. The question of conditional deposit under Section 20(4) of Act No. 13 of 1972 has no relevance for the purposes of consideration of question whether the deposit could be accepted as security, if so offered, under proviso to Section 17(1) of the Provincial Small Cause Courts Act. Without recording any finding, whether the deposit made was conditional or unconditional, it may be observed that so far the prayer for taking this deposit as security is concerned, there was no condition attached to it for the purpose of treating it as security under Section 17(1) of the Provincial Small Cause Courts Act. It cannot be said that any condition was attached for that purpose. The question whether it was a conditional deposit or not, under Section 20(4) of the Act No. 13 of 1972, would be a matter for consideration while disposing of the case on merits as well as the effect of such a deposit. The amount in deposit, in the Court is more than the amount as decreed under ex parte decree. In case the application for setting aside the ex parte decree is dismissed, the decretal amount can very well be realised from the deposit for which a request was made to take it as security under proviso to Section 17(1) of the Provincial Small Cause Courts Act. No doubt it has been mentioned in the application moved for accepting the amount in deposit as security, that the said amount was deposited under Section 20(4) of the Act No. 13 of 1972, under protest but no condition has been attached for accepting it as security ; rather the prayer is that the amount of Rs. 7,349.70 which the applicant had deposited, may be treated as security. In this connection it may also be observed that as soon as the decree has

been passed and so long it subsists the dispute as regards rate of rent will also be taken to have been decided by the ex parte decree, decreeing the rent at the rate of Rs. 100 per month as claimed by the plaintiff opposite party. After a decree had been passed accepting the rate of rent as claimed by the plaintiff, It could not be said that out of the deposit made, only an amount at the rate of Rs. 40 per month as claimed by the defendant revisionist could only be realised. The amount in deposit is also more than the amount decreed at the rate of Rs. 100 per month as rent. In the above circumstance, the trial court manifestly erred when it thought that the security of the amount deposited could not be accepted as it was a conditional deposit.

9. The trial court has observed that the defendant can take back the amount once ex parte decree is set aside, but such amount cannot be withdrawn by the plaintiff under Order XV, Rule 5, C.P.C. unless specific order is passed. No specific order for amount in question can be passed because still it is said to be a deposit under protest. The above ground given by the trial court for not accepting the request for taking the said amount as security is not sustainable. It has already been observed that once a decree has been passed at the rate of rent as claimed by the plaintiff, the question of dispute about the rate of rent ceased to exist. Whole amount under the decree can be realised from the security offered by the defendant-revisionist. In case ex parte decree is set aside, the character of the deposit as security will also cease and it would again be treated an amount deposited under Section 20(4) of Act No. 13 of 1972 and under Order XV, Rules 5, C.P.C. if any amount has been deposited under that provision. If under the law, the defendant is entitled to withdraw such an amount, he will certainly be liable to face the consequence which may flow in view of the provisions contained under Section 20(4) of Act No. 13 of 1972 and Order XV, Rule 5, C.P.C. Consideration of such a situation or condition at this stage, as a matter of fact does not arise.

10. I find no merit in the submission made by the opposite party that the revisionist could withdraw the amount and re-deposit the same under Section 17 of the Provincial Small Cause Courts Act. Such an exercise would be wholly unnecessary. Once the amount was still in deposit with the Court, it would easily be adjusted for satisfying the ex parte decree in case it was not set aside. In this

connection a case in *Lachhi Ram v. First Additional District Judge, Meerut and Ors.* 1984 ALJ 189 : 1984 (1) ARC 4, may be referred. In that case, the deposits were made under Section 17 of the Provincial Small Cause Courts Act.- On setting aside the ex parte decree, it was applied on the first date of hearing that the deposits already made under Section 17 of the Provincial Small Cause Courts Act may be considered for extending the benefit of Section 20(4) of Act No. 13 of 1972. It was held that if the conditions of Section 20(4) of Act No. 13 of 1972 are fulfilled, the deposit made under Section 17 of the Provincial Small Cause Courts Act can be taken into account for extending benefit under Section 20(4) of the Act 13 of 1972. It was further held that so long the amount was in deposit and was available, it is immaterial whether it was made in one capacity or the other. The relevant passage may be quoted as follows:

Therefore, there is no charm or magic whether deposit was made In one capacity or the other so long it is deposited with Court before first date of hearing. If from circumstances it appears the tenant in order to save himself from misery of eviction was bona fide depositing or had deposited and complied with stringent and harsh, conditions provided in Sub-section (4) then he should not be denied the benefit on one or the other pretext by finding loopholes due to mistake in not making the application or not withdrawing the deposit under Section 17 and then redepositing it under Sub-section (4). The word deposit should not be construed in pedantic manner. It should be understood and interpreted so as to advance the object of the provision. The amount deposited under Section 17 exhausted its purpose once ex parte decree was set aside and it became deposit with Court.¹¹. Though the above case was in relation to a situation where the amount deposited under Section 17 of the Provincial Small Cause Courts Act was to be taken into account as payments made under the provisions of Section 20(4) of the Act No. 13 of 1972 but what is clear is that even though the amount may have been deposited under some other provisions and it was available with the Court for the purposes of satisfying the decretal amount under the ex parte decree, the same could very well be accepted as security under Section 17 of the Provincial Small Cause Courts Act.

21. This Court in the case of Shiv Skankar Singh v. IV A.D.J. Kanpur. 1997 ARC 491 : 1997 (2) AWC 1201, took the view, that while considering application under Section 17 of Provincial Small Causes Courts Act amount of rent deposited under Section 30(1) should be adjusted. Relevant paragraph 6 is being extracted below.:

6. The amount deposited under Section 30(1) of the Act is payable to landlord on his application for withdrawal either during the pendency of the suit or after the final decision in his favour. By an ex parte decree the suit for ejectment, recovery of arrears of rent and damages deemed to have been decided in favour of the landlord, so if the ex parte decree is not set aside, the landlord would be entitled to receive such deposits made under Section 30(1) of Act No. 13 of 1972 to the satisfaction of the decree. On this analogy if the application under Order IX, Rule 13, C.P.C. fails, the landlord would have right to withdraw the money deposited as above and proceed to execute the decree for recovery of rest of the decretal amount. Therefore, I am of the view that the money deposited under Section 30(1) is adjustable in the compliance of the proviso to Section 17(1) of the Judge, Small Causes Court Act. So even if the deposit of Rs. 1,044 beyond the period of limitation, the application under Order IX, Rule 13, C.P.C. cannot be rejected because the money, which has already been deposited by the petitioner is adjustable. Both the courts below have, therefore, committed an error in rejecting the application on the aforementioned grounds.

22. As already discussed above, deposits made under Sub-section (4) of Section 20 and Section 30 of U.P. Act No. XIII of 1972 and under Order XV, Rule 5, of C.P.C. are in custody of Court, and said amount at any point of time can be withdrawn by the landlord. Said amount already deposited and lying with the Court at the point of time of presenting application, can be treated as deposit in the Court, the amount due from him under the decree or in pursuance of the judgment and mere information is good enough on this score, as records of deposit are already with the Court, and can be very well verified by the Court. If the deposits already made are of amount due and over and above the amount due, the application under Order IX, Rule 13 will not be non-suited for non-compliance of proviso of Section 17(1) of Provincial Small Causes Courts Act and in case it is short of the amount due application will have to be necessarily dismissed as not

competent and maintainable provided at the point of time of presenting application entire amount has not been deposited. In other category of cases, i.e., where tenant intends to furnish security, therein prior application has to be there as per Kedarnath's case (supra).

23. Facts of the present case are on better footing, inasmuch as here revisional court has recorded categorical finding that as per ex parte decree, tenant was required to deposit Rs. 5,338.75 in cash which was inclusive of rent claimed by plaintiff and other expenses and total which has been deposited by him was over and above the amount which was to be paid by him under decree, i.e., more than Rs. 5,800.

24. In the present case admitted position is that after ex parte decree has been passed application to recall ex parte decree was made on 24.5.1993 and alongwith the same application under the proviso to Section 17(1) has not at all been moved. Said application was admittedly moved subsequent to the same on 25.2.1994 and in the said application mention was made by him that he has already deposited the rent; cost of suit and interest of J.S.C.C. suit much earlier before passing of ex parte decree. Said application which has been moved on behalf of tenant was not stating any thing new rather it was sought to be stated by the tenant that in the present case decretal amount is already with the Court as he has already paid arrears of rent, cost of suit and interest of J.S.C.C. suit much before passing of ex parte decree and same may be taken into consideration while entertaining application. Distinction will have to be drawn qua the cases wherein entire amount as mentioned in the proviso to Section 17 of Provincial Small Cause Courts Act 1887 already stands deposited even before passing of ex parte decree. In the said event of entire amount in question being prior deposited, information has to be furnished before Judge, Small Causes Court, then said fact on verification can be treated as sufficient compliance as provided under the proviso to Section 17(1) of Provincial Small Cause Courts Act 1887, inasmuch as nothing new has been sought to be done after expiry of the period rather only information has been furnished that said condition has already been complied with and interest of landlord is fully protected as per object and the purpose of Section 17. Tenant cannot be asked to make deposit for second time and furnish security for

the second time in the backdrop that prior to passing of decree entire amount due under decree or judgment has already been deposited. Judge, Small Causes can make inquiry in the matter of this fact on being apprised as to whether decretal amount is there or not but where decree in question has been passed and decretal amount mentioned as above is not at all there then law laid down by Hon'ble Apex Court in Kedarnath's case (supra) has to be followed In its word and spirit. Facts narrated above clearly makes KedarnathJtS case (supra) distinguishable.

25. In the facts of the present case as finding of fact is that entire amount has been deposited which was over and above to the decretal amount and revisional court has allowed the same then there being no failure of justice, then there is hardly any scope of interference.

26. Consequently, in terms of observations made above, present writ petition is dismissed.

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