

**Ram Gopal Vs. Sri Ram**

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**Court :** Allahabad

**Decided On :** Aug-16-2005

**Reported in :** 2006(1)AWC342

**Judge :** Anjani Kumar, J.

**Acts :** Provincial Small Cause Courts Act - Sections 17 and 25; [Code of Civil Procedure \(CPC\) , 1908](#) - Order 9, Rule 13

**Appeal No. :** Civil Revision No. 293 of 2005

**Appellant :** Ram Gopal

**Respondent :** Sri Ram

**Advocate for Def. :** M.K. Nigam and ;R. Sahai, Adv.

**Advocate for Pet/Ap. :** Preet Pal Singh and ;Anil Tiwari, Adv.

**Disposition :** Revision dismissed

**Judgement :**

ORDER

**Anjani Kumar, J.**

1. Heard learned Counsel for the parties.

2. Aggrieved by an ex parte decree dated 19th March 2004, passed by the Judge Small Cause Courts in a suit for recovery of arrears and eviction of the petitioner by the landlord, the petitioner-tenant filed an application under Order IX, Rule 13 for setting aside ex parte decree dated 19th March 2004. This application under Order IX, Rule 13 was filed on 21st May 2004. Along with this application dated 21st May 2004 for setting aside ex parte decree, neither any amount was deposited nor any application with prayer for furnishing security was made as contemplated under proviso to Section 17 of the Provincial Small Cause Courts Act. That on 22.4.2004 an amount of Rs. 4,400 as against decretal amount of Rs. 20,000 and odd was deposited by the petitioner. This admittedly does not cover the entire decretal amount. On 24th May 2004 an application was filed by the petitioner for furnishing security. On this application the Court was pleased to allow three days' time to furnish security on 27th. May 2004. The security was furnished. The trial court rejected the application under Order IX, Rule 13 for setting aside ex parte decree on the ground of non-compliance of Section 17 of the Provincial Small Cause Courts Act. Aggrieved thereby the petitioner preferred a revision under Section 25 of the Act. The revisional court maintained the order passed by the trial court by affirming the finding that the petitioner has not complied with the proviso to Section 17 of Provincial Small Cause Courts Act which is held to be mandatory in view of the decision of the Apex Court in *Kedarnath v. Mohanlal Kesarwani and Ors.* : [2002]1SCR144 , wherein in paragraph 8 the Apex Court has ruled that the proviso to Section 17 of Provincial Small Cause Courts Act is mandatory. Paragraph 8 of the said decision is reproduced below :

8. A bare reading of the provision shows that the Legislature has 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.

3. In view of the aforesaid law laid down by the Apex Court I do not find any error in the order passed by the revisional court as well as the trial court. This revision has, therefore, no force and is accordingly dismissed.

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