

Dhanna Vs. Arjun Lal

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Court : Rajasthan

Decided On : Dec-07-1962

Reported in : AIR1963Raj240

Judge : Jagat Narayan, J.

Acts : Rajasthan Small Cause Courts Ordinance, 1950; Provincial Small Cause Courts Act - Sections 17

Appeal No. : Civil Revn. No. 35 of 1961

Appellant : Dhanna

Respondent : Arjun Lal

Advocate for Def. : Sampat Raj Bhansali, Adv.

Advocate for Pet/Ap. : Nauratan Mal, Adv.

Disposition : Revision dismissed

Judgement :

ORDER

Jagat Narayan, J.

1. This is a revision application by the defendant against an ex parte decree passed by the Judge, Small Causes, Udaipur.

2. The sole question which arises for determination is whether the proviso to Clause 15(1) of the Rajasthan Small Cause Courts Ordinance is mandatory or not. Clause 15 of the Ordinance corresponds to Section 17 of the Provincial Small Cause Courts Act. This proviso runs as follows:

'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.'

3. The underlined portion of the above proviso was added by Act IX of 1935. Before the amendment the words were-

'security to the satisfaction of the Court for the performance of the decree or compliance with the judgment, as the Court may direct.'

4. There was a conflict of authority in interpreting the proviso as it stood prior to the amendment. One view was that it was directory and another view was that it was mandatory. In making the amendment the Legislature has apparently adopted the latter view. The applicant applying for a review of judgment or for an order to set aside an ex parte decree must, at the time of presenting his application, do one of two things, namely, either deposit in Court the amount due under the decree or give such security for performance of the decree as the Court may have directed on a previous application made by him in this behalf. If he does not make the previous application, he must put in the decretal amount in full. If he has made the previous application and succeeded in getting an order for security, he can, instead of depositing the decretal amount, furnish the security directed by the Court. It is no longer open to the Court to extend the time within which the deposit is to be made or the security furnished.

5. In the present case an application for setting aside the ex parte decree was moved within time. But the applicant did not either deposit in Court the amount due under the decree or obtain the order of the Court for giving security for the

performance of the decree within the period of limitation. The Court had no alternative but to dismiss his application.

6. The revision application is accordingly dismissed. In the circumstances of the case, I direct that parties shall bear their own costs of this application.

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