

**(1907) 04 AHC CK 0004**

**Allahabad High Court**

**Case No:** None

J.G. Willis and Others

APPELLANT

Vs

Jawad Husain and Others

RESPONDENT

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**Date of Decision:** April 12, 1907

**Citation:** (1907) ILR (All) 468

**Hon'ble Judges:** Richards, J

**Bench:** Single Bench

**Final Decision:** Allowed

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### **Judgement**

Richards, J.

In this case the plaintiffs sued for a sum between Rs. 60 and Rs. 65 alleged to be due by the representatives of a deceased pleader to them as executors of the Will of one T.A. Martin, deceased. The defendants contested the claim of the plaintiffs and claimed a set-off amounting to about Rs. 120. The case was heard by the Judge of the Small Cause Court, who dismissed the plaintiffs' suit and decreed the whole set-off claimed by the defendants. An application was made for review of judgment and the plaintiffs paid a court fee of Rs. 4-8. The Court below, without going into the merits of the application for review of judgment, decided that the applicants should have paid a court fee to cover a sum equivalent to the amount claimed by the plaintiffs in their plaint plus the amount claimed by the defendants as set-off, No time was given to the applicants to pay this additional court fee. The application for review of judgment was made within 90 days from the date of the decree. The plaintiffs now seek to set aside the order rejecting the application for review on the ground that the court fee paid by them was more than sufficient and that they in any event should have been allowed time to pay the additional court fee. Article 5 of the first schedule or the Court Fees Act of 1870 expressly provides that where an application for review of judgment is made within 90 days and where there has been no appeal, the proper fee payable by the applicants is one half of the fee leviable on the plaint. The fee on the plaint in the present case which was to recover

a sum between Rs. 60 and Rs. 65 was a sum of Rs. 4-14. It seems to me quite clear that the applicants were entitled to present their application for review of judgment by paying a court fee of Rs. 2-7. I cannot see that the fact that the defendants claimed a set-off amounting to Rs. 120 made any difference. In my judgment the learned Judge of the Small Cause Court was clearly wrong in rejecting the application for review of judgment on the ground of court fee. It is said, however, that Section 629 of the CPC expressly enacts that an order rejecting an application for review is final, and in support the learned Counsel for the opposite side has cited the case of *Ram Lal v. Ratan Lal* ILR (1904) All. 572. In that case there had been a decision on the merits by the Court whose order it was sought to set aside in revision, and the learned Judges were of opinion that none of the facts in that case fell within any of the three contingencies specified in Section 622 of the Code of Civil Procedure. The present case differs in two important respects. In the first place this is an application for revision of a decision of a Small Cause Court, and secondly, there was no decision on the merits. On reference to Section 623 of the CPC it will be seen what are the proper and only grounds on which an application can be made for review of judgment. Section 626 provides that the Court may reject the application if it considers that there are no sufficient grounds for review. I think this section clearly refers to a consideration of the application on the merits, and if in the present case there had been a consideration of the case on the merits, I would have no hesitation in rejecting the present application. I wish it clearly to appear that I express no opinion whatever on the general merits of the case. My decision is confined to a decision that the ruling of the Court below as to the court fee was erroneous and that it ought to have heard the application. I therefore allow the application and set aside the order complained of and remand the case to the Court below to hear and determine the application in accordance with law. Costs of this application will abide the result.