

**(1958) 03 AHC CK 0012**

**Allahabad High Court**

**Case No:** F.A.F.O. No. 336 of 1955

Durga Prasad

APPELLANT

Vs

Swami Avidya Nand Guru Swami  
Hamarata Nand

RESPONDENT

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**Date of Decision:** March 12, 1958

**Acts Referred:**

- Civil Procedure Code, 1908 (CPC) - Order 8 Rule 6
- Court Fees Act, 1870 - Article 1, 19, 7

**Citation:** AIR 1958 All 574

**Hon'ble Judges:** V.D. Bhargava, J

**Bench:** Single Bench

**Advocate:** G. Kumar and N. Kumar, for the Appellant;

**Final Decision:** Dismissed

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### **Judgement**

V.D. Bhargava, J.

This is an appeal u/s 6A of the Court-fees Act.

2. The plaintiff brought a suit for recovery of the price of stone ballast supplied to the defendant. The defendant in the written statement alleged that the plaintiff failed to supply the stone ballast and, therefore, he suffered a loss of Rs. 13,459/3/-. He, therefore, claimed a set off. The court demanded court-fee on this set-off. The defendant objected to it. After hearing the parties the Civil Judge has asked the defendant to pay ad valorem court fee on Rs. 13,459/-. Against that order this appeal has been filed.

3. It had been contended that by claiming these damages the defendant was actually not claiming his set off but was pleading adjustment. I do not think that this is case of adjustment or payment; but the present case is a case of set-off on the ground of damages suffered on account of non-supply of the stone ballast. If the claim by the plaintiff had been admitted and the amount due from the defendant to

the plaintiff had been adjusted in this account, the matter would have been different. But the cause of action of the claim for damages being entirely different it is a clear case of set off covered by the Bench decision of this Court in [Ratan Lal Vs. Madari and Another,](#).

4. Learned counsel for the appellant relied on Punjab Electric Power Co., Ltd. v. Suraj Kishan AIR 1937 Lah 62 (B). I do not think the facts of that case are similar to the facts of the present one and in my opinion the decision of the court below is correct. I see no force in this appeal; it is accordingly dismissed. In the circumstances of the case I make no order as to costs.

5. The record of the case shall be sent back to the court below forthwith so that the case may be decided as expeditiously as possible.