
Shakeel Ahmad Vs Zameer Ahmad Siddiqui and another

S.C.C. Revision No. 39 of 2016.

Court: ALLAHABAD HIGH COURT (LUCKNOW BENCH)

Date of Decision: April 5, 2016

Acts Referred:

Civil Procedure Code, 1908 (CPC) â€” Order 9 Rule 13#Provincial Small Cause Courts Act, 1887 â€” Section 17

Citation: (2016) 167 AIC 951 : (2016) 116 ALR 574 : (2016) 2 ARC 75 : (2016) 132 RD 195

Hon'ble Judges: Anil Kumar, J.

Bench: Single Bench

Advocate: Nand Kumar Shukla and Vivek Raj Shukla, Advocates, for the Appellant; Vinay Verma, Advocate, for the Respondent

Final Decision: Allowed

Judgement

Anil Kumar, J. - Heard Sri N.K. Shukla, learned counsel for the revisionist, Sri Vinay Verma and Sri Shakeel Ahmad, learned counsel for

opposite parties and perused the record.

2. With the consent of learned counsel for the parties, present revision is disposed of at the admission stage.

3. Facts, in brief, of the present case are that opposite parties/land lord filed a suit for ejectment and recover of rent on the ground of default,

structural additions and alterations. Accordingly a SCC Suit No. 54 of 2006 has been registered before the Judge, Small Cause Court/Additional

District Judge, Court No. 13, Lucknow, decided ex parte vide judgment and decree dated 1.9.2007.

4. Thereafter, on 2.2.2008 Tenant/revisionist filed an application under Order 9, Rule 13 CPC alongwith application under Section 17 of the

Provincial of Small Cause Courts Act, registered as Misc. Case No. 2C of 2008 and on 7.2.2009, land lord/respondent filed an objections.

5. By an order dated 1.2.2016 Misc. Case No. 2C of 2008 was dismissed . In view of the said factual back ground present revision has been

filed under Section 25 of the Provincial Small Cause Courts Act.

6. At the very outset, Sri Vinay Verma and Shakeel Ahmad, learned counsel for the opposite parties submit that in case revisionist deposits the

entire decretal amount within the time frame as fixed by this Court, an application moved by the revisionist under Order 9, Rule 13 CPC may be

heard and decided on merit.

7. The said submission has been accepted by Sri N.K. Shukla, learned counsel for the revisionist.

8. After hearing learned counsel for the parties and going through the provisions as provided under Order 9, Rule 13 CPC which reads as under:-

record as well as taking into consideration the above said facts as well as the following facts:-

9. Order 9, Rule 13 . Setting aside decree ex parte against defendants-In any case in which a decree is passed ex parte against a defendant, he

may apply to the Court by which the decree was passed for an order to set it aside; and if he satisfies the Court that the summons was not duly

served, or that he was prevented by any sufficient cause from appearing when the suit was called on for hearing, the Court shall make an order

setting aside the decree as against him upon such terms as to costs, payment into Court or otherwise as it thinks fit, and shall appoint a day for

proceeding with the suit:

10. Provided that where the decree is of such a nature that it cannot be set aside as against such defendant only it may be set aside as against all or

any of the other defendants also:

[provided further that no Court shall set aside a decree passed ex parte merely on the ground that there has been an irregularity in the

service of summons, if it is satisfied that the defendant had notice of the date of hearing and had sufficient time to appear and answer the

plaintiffs claim].

[Explanation- Where there has been an appeal against a decree passed ex parte under this rule, and the appeal has been disposed of on any

ground other than the ground that the appellant has withdrawn the appeal, no application shall lie under this rule for setting aside the ex parte

decree].

11. And Section 17 of the Provincial Small Cause Courts Act-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 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 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 proviso to sub-section(1), the security may be realised in manner provided by

Section [145] of the Code of Civil Procedure [1908](4 of 1908).

12. Further, while considering the scope of the proviso to Section 17 of the Provincial Small Cause Courts Act, 1887 read with the provisions of

Order 9, Rule 13 CPC as well as Section 20 (2) of the U.P. Urban Buildings(Regulation of Letting, Rent and Eviction) Act, 1972, Hon"ble the

Apex Court in the case of Kedarnath (Supra) has held as under:-

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. IX 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 this 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).

The object behind establishing Small Cause Courts conferred with jurisdiction to try summarily such specified category of cases which need

to be and are capable of being disposed of by adopting summary procedure of trial is to secure an expeditious disposal and to curtail the

lengthy procedure of litigation. Excepting an order for compensatory costs in respect of false or vexatious claims or defences or an order

imposing fine or directing the arrest or detention in the civil prison of any person (except where such arrest or detention is in execution of a

decree), orders and decrees of courts of small causes are not appealable they are only revisable by the High Court (or by District Court

under Section 115 of CPC as amended in its application to State of U.P.). The jurisdiction to entertain and hear an application to set aside a

decree passed ex-parte or for a review of judgment by courts of small causes is sought to be qualified and narrow down by imposing

condition as to deposit or giving security for performance or compliance by enacting proviso to sub-section (1).

Such a provision fits in the scheme of the PSCC Act. Although there is no authoritative pronouncement by this Court (none brought to our

notice) interpreting the nature and scope of the proviso however, the learned counsel for the appellant brought to our notice a number of

decisions delivered by the High Courts of Allahabad, Oudh, Madras, Orissa, Rajasthan and Lahore which have taken the view that the

proviso is mandatory and non-compliance therewith would entail dismissal of the application because such noncompliance cannot be

condoned or overlooked by the court. They are, to wit : Mohammad Ramzan Khan v. Khubi Khan AIR 1938 Lahore 18 (DB), Murari Lal

v. Mohammad Yasin AIR 1939 Allahabad 46, Mt. Shikhani v. Bishambhar Nath AIR 1941 Oudh 103, Jagdamba Prasad and Ors. v. Ram

Das Singh and Anr. AIR 1943 Allahabad 288, Roshan Lal v. Brij Lal Amba Lal Shah, AIR 1944 Oudh 104, Vembu Amal v. Esakkia Pillai,

AIR 1949 Madras 419, Khetra Dolai v. Mohan Bissoyi AIR 1961 Orissa 37, and Dhanna v. Arjun Lal AIR 1963 Rajasthan 240. As the

present case arises from the State of Uttar Pradesh, the learned counsel for the appellant cited a series of decisions delivered by Allahabad

High Court so as to show the view of the law being consistently taken there. These are : Krishan Kumar v. Hakim Mohd. 1978 ALJ 738,

Sharif v. Suresh Chand and Ors. 1979 AWC 256, Roop Basant v. Durga Prasad and Anr. (1983) 1 ARC 565, Mohd. Islam v. Faquir

Mohammad (1985) 1 ARC 54, Krishan Chandra Seth v. Dr. K.P. Agarwal and Anr., 1988 1 ARC 310, Mamta Sharma v. Hari Shankar

Srivastava and Ors., 1988 1 ARC 341, Mohd. Yasin v. Jai Prakash 1988 2 ARC 575, Purshottam v. Special Additional Sessions Judge,

Mathura and Ors. 1991 2 ARC 129, Ram Chandra (deceased L.Rs.) and Ors. v. Ixth Additional District Judge, Varanasi and Ors., AIR

1991 Allahabad 223, Sagir Khan v. The District Judge, Farrukhabad and Ors., 1996 27 ALR 540, Mohammad Nasem v. Third Additional

District Judge, Faizabad and Ors. AIR 1998 Allahabad 125, and Beena Khare v. VIIIth Additional District Judge, Allahabad and Anr.

2000 2 ARC 616.

The learned counsel for the respondent brought to our notice Surendra Nath Mittal v. Dayanand Swarup and Anr. AIR 1987 Allahabad

132, Chigurupalli Suryanarayana v. The Amadalavalasa Co-operative Agricultural Industrial Society Ltd. AIR 1975 A.P. 196 and

Tarachand Hirachand Porwal v. Durappa Tavanappa Patravali AIR 1943 Bombay 237. All the three decisions are single Bench decisions.

Suffice it to observe that the first two decisions are more or less ad hoc decisions which do not notice other decisions and the general trend

of judicial opinion. The view propounded therein does not appeal to us. The Bombay decision does not lay down any general proposition of

law and proceeds on its own facts.

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.

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.

13. The same view has been reiterated by this Court in the case of Jai Prakash Pandey v. Baboo Lal Jaiswal, 2009 (3) ARC 497 after placing

reliance of the judgment given by Hon"ble the Apex Court in the case of Kedarnath (Supra) that the provisions of Section 17 of the Provincial

Small Cause Courts Act are mandatory in nature and non compliance would entail dismissal of the application and such non compliance cannot be

condoned or overlooked by the Court.

14. Subsequently Hon"ble the Apex Court in the case of Shyam Shanker and others v. Sahu Sarvesh Kumar and others, 2008 (3) ARC 115 held

that deposit of the decretal amount can be dispensed with by Court if the application is accompanied alongwith the application filed under Order 9,

Rule 13 CPC. (See also ; Zulfiqar Hussain v. Madan Gopal Chopra, 2012 (2) ADJ 463 and Raj Kumar Makhija and others v. Raj Kumar

Makhija and others, 2012 (9) ADJ 337).

15. Thus, keeping in view the law on the subject as well as moving an application under Order 9, Rule 13 CPC read with Section 17 of the

Provincial Small Cause Courts Act, 1887 following conditions are to be satisfied:-

(1) That the proviso is mandatory

(2) the application seeking to set aside decree or review must be accompany by a deposit of decretal amount in Court.

(3) the application for dispensation of deposit can be filed upto the date of filing the application for setting aside the decree.

(4) the proviso dos not provide for extension of time.

16. In the instant matter, it is not in dispute between the parties that an application Order 9, Rule 13 CPC has been moved by the tenant/revisionist

for setting aside ex parte decree dated 1.9.2007 passed in SCC Suit No. 54 of 2006 as the revisionist has not deposited the decretal amount as

per the provisions as provided under Section 17 of the Provincial Small Cause Courts Act so an order dated 1.2.2016 was passed in Misc. Case

No. 2C of 2008.

17. However in the instant matter an offer given by learned counsel for the opposite parties/landlords that in case tenant/revisionist deposits the

entire decretal amount in that circumstances, application moved by him under Order 9, Rule 13 CPC may be considered in accordance with law

and the same is accepted by learned counsel for the revisionist.

18. For the foregoing reasons, revision is allowed. The impugned order dated 1.2.2016 passed in Misc. Case No. 2C of 2008 is set aside with the

direction that the revisionist/tenant to deposit entire decretal amount as per judgment and decree dated 1.9.2007 passed in SCC Suit No. 54 of

2006 by 15th of May, 2016. If the same is done, the court concerned shall restore Misc. 2C of 2008 (Shakeel Ahmad v. Jameer Siddiqui) and

decide the application under Order 9, Rule 13 CPC moved by the revisionist expeditious after hearing learned counsel for the parties on merits.

19. No order as to costs.