

1921

KAYASTHA
TRADING
AND BANKING
CORPORATION,
(LD.)
v.
SRI NARAIN
SINGH.

condition of granting the stay. It has further been held that where a Company has vexatiously delayed its creditor so that he could not obtain a decree before the presentation of the petition and had to issue execution after the winding-up had taken place, nonetheless he has been allowed to proceed with his execution. Secondly, while agreeing with what my brother has said about the costs in this case, I would draw attention to the recognized practice with regard to liquidators, who are officers of the court and not ordinary litigants at all, that a liquidator appointed in a winding-up by the court ought not to appeal in any case without the permission of the winding-up court, and if he does so, he runs considerable risk, in the event of failure, of having to pay the costs out of his own pocket.

Appeal dismissed.

REVISIONAL CIVIL.

Before Mr. Justice Tudball.

BASDEO, RAM SARUP AND OTHERS (DEFENDANTS) v. MUL CHAND,
NEMI CHAND (PLAINTIFF).*

1921
January, 24.

Act No. IX of 1887 (Provincial Small Cause Courts Act), section 17—Decree ex parte—Claim decreed in full but incorrect amount entered—Application by defendant for a re-hearing—Deposit of amount named in the decree.

Where an *ex parte* decree passed by a Court of Small Causes was incorrectly drawn up, inasmuch as the principal sum decreed was wrongly entered, the costs were wrongly entered and no sum at all was entered on account of interest *pendente lite*, it was held that the defendant in applying for a re-hearing had sufficiently complied with the terms of the proviso to clause (1) of section 17 of the Provincial Small Cause Courts Act, 1887, when he deposited in court the sum which was in fact named in the decree.

THIS was an application in revision from an order of a Court of Small Causes rejecting the defendants' application for the re-hearing of a suit which had been decided against them *ex parte* upon the ground that the defendants had not complied with the requirements of section 17 of the Provincial Small Cause Courts Act.

The facts of the case are fully stated in the judgment of the Court,

Dr. Kailas Nath Katju, for the applicants.

Munshi Narayn Prasad Ashthana, for the opposite party.

* Civil Revision No. 14 of 1920.

TUDBALL, J. :—This is an application in revision under section 25 of the Small Cause Courts Act. The facts are as follows :— The plaintiff, opposite party, brought a suit against the applicants to recover a certain sum of money. In the plaint, as it stood first, that sum was Rs. 285-12-0. He also asked for interest *pendente lite* and subsequent to the decree. The decree was passed *ex parte* and ran as follows :—

Date	..	..	..	20th of August, 1919
In whose favour	..	..	..	Plaintiff
Against whom	..	..	..	Defendants
Amount decreed	..	..	..	Rs. 285-12
Costs	..	..	..	Rs. 33-14
By whom payable	..	..	..	Defendants.

Under these the words written were :—“ The claim of the plaintiff together with costs and future interest is decreed.”

Now, after the institution of the suit the plaintiff amended his plaint and his claim was actually for Rs. 293-8-3 and Rs. 43-4-0 costs. The decree was passed on the 20th of August, 1919. On the 26th of August, six days afterwards, the defendants deposited Rs. 320 under section 17 of the Act and asked for a re-hearing. Their application for re-hearing has been rejected on the ground that the deposit was insufficient because it did not include a sufficient amount to cover the interest on the claim from the date of the suit up to the date of the decree. The total figures in the decree are Rs. 319-10-0. They deposited Rs. 320, one anna more than what was necessary to cover the interest for six days on Rs. 319. The lower court has held that the words “ *Dawa mudlai mai kharcha wa sud ainda decree ho* ” ought to have put the defendants on their guard and made them deposit a sufficient amount to cover the interest from the date of the suit up to the date of the decree. The court below has taken a very technical view of the whole matter, probably because the learned gentleman who represented the defendant in the court below was a little bit too insistent on his view of the case and lost sight considerably of his clients' interest. If the court below did not wish to mislead any person it ought to have put into its decree correct figures. It is all very well to say that the plaintiffs' claim is decreed in full and then to add under or above that statement, details of figures which are incorrect and then to

1921

BASDEO, RAM
SARUP
v.
MUL CHAND,
NEMI
CHAND.

1921

BASDRO, RAM
SARUPv.
MUL CHAND,
NEMI
CHAND.

ask the defendants to make a calculation for themselves to see whether those figures were correct or not. It is the duty of the court to enter correct figures in its decree, and if a defendant deposits the amount stated therein under section 17 of the Small Cause Courts Act, he must be deemed to have complied with the law. The decree drawn up by the court below was carelessly drawn up. It was incorrect in figures as well as in details, and it is impossible to say on the face of that decree that the defendants had not complied with the law. As a matter of fact the decree has since been amended on the 20th of December, 1919, and the figures have been altered. I, therefore, allow the revision and set aside the order of the court below. The defendants will be allowed two weeks from the date of the receipt of the record by the court below to deposit a sum of Rs. 336-12-3 *plus interest* from the 23rd of June, 1919, to the 26th of August, 1919. Intimation of the receipt of the record shall be given to the pleader for the defendants within twenty-four hours of its arrival. Costs of this application and all costs incurred by either party up to the present moment will be costs in the cause and will abide the result. Any sum already deposited, if any, will go to make up the sum of Rs. 336-12-3.

Order modified.

APPELLATE CIVIL.

Before Mr. Justice Tudball and Mr. Justice Lindsay.

SAHIB RAM (DEFENDANT) v. MUSAMMAT GOVINDI (PLAINTIFF)*

1921
January, 25.

Act No. VII of 1889 (Succession Certificate Act), section 4—Act No. IX of 1908 (Indian Limitation Act), section 18—Suit against person wrongfully collecting debt due to estate of deceased person—No succession certificate necessary—Fraudulent concealment—Limitation.

No succession certificate is necessary where what the plaintiff is claiming is not a debt due to a deceased person, but money which, having been due to the deceased, has been wrongfully appropriated after his death by a third party.

A mortgage was executed on the 18th of November, 1891, in favour of S, A and H. H died in 1892, and on the 30th of July, 1910, S and A brought a

*Second Appeal No. 649 of 1918 from a decree of E. E. P. Rose, Second Additional Judge of Aligarh, dated the 27th of February, 1918, confirming a decree of Shams-ud-din Khan, First Additional Subordinate Judge of Aligarh, dated the 22nd of June, 1916.