

an appeal lies therefrom to the District Judge but not to the High Court.

In the case before me the order of the Assistant Collector refusing to stay the proceedings in the suit pending before him was passed on an application and may be taken to mark the termination of a proceeding started by an application made for stay. No appeal, however, lies to the District Judge from such an order. It is not, therefore, open to revision at this stage. In this view the preliminary objection prevails and the application is dismissed with costs.

1931

RAM
NARAIN
SAHU
v.
MAKHANA.

Before Sir Grimwood Mears, Chief Justice, and Mr. Justice Sen.

KALLU MAL (PLAINTIFF) v. BIKRAMAJIT SINGH
(DEFENDANT).*

1-31
December,
7.

Provincial Small Cause Courts Act (IX of 1887), section 17 (1) proviso—Deposit with application for setting aside ex parte decree—'Amount due under the decree'.

Where an application for setting aside an *ex parte* decree of a small cause court was accompanied by a deposit which covered the amount due under the decree at the date thereof but fell short of the amount which became due at the date of the application, and the *ex parte* decree was set aside, it was held in revision that the deposit was in compliance with the provisions of section 17(1) proviso of the Provincial Small Cause Courts Act, and that in any case substantial justice having been done there was no ground for revision.

Mr. S. N. Seth, for the applicant.

Mr. R. C. Ghatak, for the opposite party.

MEARS, C. J. and SEN, J.:—On the 20th of January, 1930, an *ex parte* decree was passed in favour of Kallu Mal by a court of small causes for a sum of Rs. 792-2-3 together with interest at the rate of 6 per cent. per annum. The decree also allowed Rs. 108-8-0 as costs to the plaintiff. On the 4th of November, 1930, the defendant applied to set aside

the *ex parte* decree under section 17 of the Provincial Small Cause Courts Act. His application was accompanied by a deposit and the deposit amounted to a sum of Rs. 934-2-3. The court below considered that the conditions of section 17 of the Provincial Small Cause Courts Act were fulfilled and it accordingly set aside the *ex parte* decree. It has been contended that the amount deposited in the court of small causes fell short by a small amount and the court had therefore no jurisdiction to set aside the *ex parte* decree. Our attention has been drawn to a ruling of this Court in *Bisesar Ram Dassi Ram v. Har Kishan Pahlad Rai* (1) in which it has been held by a learned Judge of this Court that on a construction of section 17 of the Provincial Small Cause Courts Act, 1887, the words "the amount due under the decree" mean "the amount due under the decree at the date it was given" and not "the amount due under the decree at the date when the application for restoration was presented". This ruling is of the year 1925. There is no published decision that we know of in which a contrary view has been taken. The ruling in question therefore was an authority for the defendant in depositing in court the amount which was equivalent to the amount which *ex facie* was due on the decree on the date when the decree was passed. The small cause court Judge in entertaining the application under section 17 of the Provincial Small Cause Courts Act was bound by this ruling. Even assuming that the case referred to above may at some time require re-consideration we are of opinion that this is a case in which the revisional jurisdiction of this Court should not be exercised in favour of the plaintiff under section 25 of the Act because we think that substantial justice has been done. We accordingly dismiss this application with costs.

(1) (1925) I. L. R., 47 All., 623.