

## REVISIONAL CIVIL.

Before Mr. Justice Mukerji and Mr. Justice Bennet.

GOBARDHAN DAS (DEFENDANT) *v.* JAI DEVI (PLAIN-  
TIF).\*

1930  
Novem-  
ber, 28.

*Civil Procedure Code, order XI, rules 18(2) and 21—Application for inspection of account-books not referred to in pleadings—Want of affidavit—Effect of—Order for production for inspection—Non-compliance—Striking out defence.*

In the case of documents not referred to in the pleadings, particulars or affidavits of documents of the party against whom an application for inspection is made, an affidavit has to be filed by the applicant to satisfy the court that the document is relevant to the case. But where the court is satisfied as to the relevancy of the document, it is not necessary that there should be an affidavit, and the want of an affidavit cannot invalidate the order of production for inspection under order XI, rule 18, of the Civil Procedure Code. Non-compliance by the defendant with such an order entails the striking out of his defence under rule 21.

Messrs. *U. S. Bajpai* and *S. B. L. Gaur*, for the applicant.

*Mr. Panna Lal*, for the opposite party.

MUKERJI and BENNET, JJ. :—This is a petition in revision by Gobardhan Das whose defence was struck off and an *ex parte* decree against whom was passed by the learned Munsif of Hathras. A preliminary point is taken that no revision lies.

It appears that after the learned Munsif had passed an *ex parte* decree against the defendant, the defendant took the matter up in appeal to the learned District Judge. The learned District Judge considered the merits of the case and was of opinion that the order complained of had been properly passed. The Judge accordingly dismissed the appeal.

The proper remedy of the applicant was to file a second appeal. When this was pointed out, the learned counsel for the applicant asked permission to amend the

\* Civil Revision No. 161 of 1923.

heading of his petition so that it might be treated as a second appeal from a decree and he offered to pay the court fees. In order to find out whether we should allow all this to be done, we looked into the merits of the case and having discovered that there were no merits, we refuse to allow the amendment to be made.

As we have heard the counsel on the merits, we may just state briefly what are the points involved. It appears that the plaintiff who is a female of the defendant's family brought a suit for recovery of the arrears of maintenance against the defendant. Her case was that she was getting regularly Rs. 30 per mensem as her allowance. The defendant denied that she ever got such a large sum and one of the questions to be decided was whether she was entitled to the allowance she claimed. On 12th September, 1928, the plaintiff made an application to the court stating that the defendant's account books would show the amount of allowance that had been regularly paid to her and she prayed that the defendant might be ordered to produce his account books for the inspection of the plaintiff. The learned Munsif directed the counsel for the defendant to produce the books on 17th September, 1928. The order was not complied with. Thereupon, a second application was made to the court on 27th October, 1928. In this application the plaintiff complained that in spite of the court's order the defendant failed to produce the books for her inspection and she asked that the defendant's written statement might be struck off as he was in contempt. Upon this, the learned Munsif passed the following order: "The defendant do produce his account books for inspection today, otherwise his defence shall be struck off." On the same day the defendant made an application saying that he had no objection whatsoever to produce the account books, but he asked for four days' time on the plea that the books were in the custody of one Damodar Das and he had left the place for Kosi.

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The learned Munsif dismissed this application on 30th October, 1928. Thereupon, on that date, namely 30th October, 1928, the defendant produced the account books and asked that the order of the Munsif might be reviewed. The Munsif wrote a long order and showed how he disbelieved the defendant's story and he said that he was not prepared to review his order. In the result, as we have said, the written statement of the defendant was struck off and an *ex parte* decree was made against him.

It was contended before us that the order of the learned Munsif was wrong in law. We are not satisfied that such is the case. The two cases that were produced before us as authority for the applicant's contention, namely *Kripa Ram v. Jawahir Lal* (1) and *Lyallpur Sugar Mills Co. v. Ram Chandra etc. Mills Co.* (2), deal with an order of production of document and do not deal with an order of inspection. Sub-rule (2) of rule 18, order XI of the Code of Civil Procedure suggests that an order of inspection could be made not only in respect of documents mentioned in the plaint and written statement and the affidavit of discovery, but also in respect of other documents. The difference between the two cases is that in the case of a document not mentioned in the plaint or written statement or the affidavit, an affidavit has to be filed by the applicant to satisfy the judge that the document is relevant to the case. In the case of a document mentioned in the plaint or written statement or affidavit of discovery, the relevancy is admitted; while in the other case, the relevancy has to be proved. But where the judge is satisfied as here, as to the relevancy of the document, it is not necessary that there should be an affidavit. At any rate, the want of an affidavit cannot invalidate the order passed by the Munsif under rule 18, order XI of the Code of Civil Procedure, and non-compliance with the

(1) (1928) 26 A.L.J., 1376

(2) (1922) I.L.R., 44 All., 565.

order entailed the penalty of the written statement being struck off. We are, therefore, satisfied that there was nothing wrong either technically or on the merits against the order of the Munsif. On the other hand, we find that the order was evidently justified in the circumstances of the case. The defendant had a long time within which to produce the account books and, if any further delay was allowed, it was feared that the books would be tampered with. The Munsif distinctly said so in his order of 30th October, 1928.

In the result, we dismiss the application with costs.

### MISCELLANEOUS CIVIL.

*Before Mr. Justice Mukerji and Mr. Justice Bennet.*

IN THE MATTER OF GUR CHARAN PRASAD.\*

*Income-tax Act (XI of 1922), sections 28, 34, 58(1)—Imposition of penalty on re-assessment—Penalty in respect of super-tax found payable on re-assessment—Jurisdiction—Procedure.*

A return of income was made by an assessee and he was assessed to income-tax in accordance therewith. Subsequently re-assessment proceedings were taken against him under section 34 of the Income-tax Act, his account-books were sent for and examined, and it was found that his income had been much larger than the figure at which it had been returned. Accordingly he was assessed to income-tax of a much larger amount than the original assessment, as well as to a certain amount of super-tax, and a penalty was also imposed upon him of a certain sum with regard to the enhanced income-tax as well as another penalty with regard to the super-tax. *Held,—*

(1) The Income-tax Officer had jurisdiction to impose a penalty in the matter of income-tax in the proceedings for assessment taken under section 34 of the Income-tax Act. The penalty under section 28 can be imposed not only in the course of the original assessment proceedings, but also when further proceedings are taken under section 34.

(2) The Income-tax Officer had no jurisdiction to impose the penalty in the matter of super-tax. Section 28, being a

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