

In view of what we have said above, we cannot dispose of this appeal without having findings from the lower appellate court on the following issues:—

(1) Whether Rs. 2,525 or any part of it, and if so how much, was actually paid as bribe by the firm or under circumstances which make it a payment by the firm.

(2) Whether the defendants are entitled to any allowance, and if so to what extent, for loss caused "by natural wastage, in conveyance, splitting, storage, driage etc.," as claimed by them.

Parties will be at liberty to adduce further evidence.

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MAL.

 REVISIONAL CIVIL.

Before Mr. Justice Mukerji and Mr. Justice Banerji.

MOTILAL RAMCHANDER (PLAINTIFF) v. DURGA
PRASAD (DEFENDANT.)*

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June, 24.

*Provincial Small Cause Courts Act (IX of 1887), section 17(1),
Proviso—Setting aside ex parte decree—Application not
accompanied by cash or security, but security deposited
within period of limitation.*

Where an application, not accompanied by cash or security deposit, was made to set aside an *ex parte* decree passed by a Small Cause Court, and two days after the presentation of the application the court directed security to be furnished and security was furnished within the time allowed by law for applying for setting aside an *ex parte* decree,—*Held* that the provisions of section 17(1), Proviso, of the Provincial Small Cause Courts Act were complied with. The application must be deemed to have been a proper application only when the proper deposit had been made, and must be deemed as having been presented on the date on which the deposit was made. The deposit having been made within time, no question arose

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as to whether the court could or could not grant time to a judgment-debtor to furnish security.

Badlu Singh v. Panthu Singh (1), disapproved. *Jeun Muchi v. Budhiram Muchi* (2) and *Assan Mohamed Sahib v. Rahim Sahib* (3), followed. *Jagan Nath v. Chet Ram* (4) and *Chhotey Lal v. Lakhmi Chand* (5), referred to.

Mr. P. M. L. Verma, for the applicant.

Mr. Panna Lal, for the opposite party.

MUKERJI and BANERJI, JJ. :—This is an application in revision under the following circumstances. decree was passed on the 4th of March, 1927, in favour of the applicant firm Moti Lal Ram Chandar Das. Durga Prasad the defendant presented an application to set aside the *ex parte* decree and the decree was set aside by the learned small cause court Judge.

By this revision the plaintiff seeks to set aside the order setting aside the *ex parte* decree on the ground that the application that was presented to the court by Durga Prasad was not accompanied with either a security bond or the cash sum which had been decreed in favour of the plaintiff. Reliance is placed on the case of *Badlu Singh v. Panthu Singh* (1).

The facts are that Durga Prasad stated that he got notice of the decree on the 12th of February, 1929. On the 23rd of February, 1929, he presented an application to set aside the decree. But that application was not accompanied by either a security bond or cash and it is urged that the court cannot look at his application because the petitioner did not comply with the provisions of section 17 of the Small Cause Courts Act. That is quite correct, but the court cannot treat an application as an application to set aside an *ex parte* decree unless and until the application is accompanied by cash or security bond. In this case, two days after the presentation of the application the court directed security to be

(1) (1922) 21 A. L. J., 173.

(2) (1904) I. L. R., 32 Cal., 389.

(3) (1920) I. L. R., 43 Mad., 579.

(4) (1906) I. L. R., 28 All., 470.

(5) (1916) I. L. R., 38 All., 425.

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furnished, and the security was furnished within the time allowed by law for applying for setting aside an *ex parte* decree. We are of opinion that the application must be deemed to have been a proper application only on the 15th of March, 1929, and must be deemed as having been presented on that date after the proper deposit had been made. A number of cases have been cited by Mr. Verma to show that the court cannot grant time to a judgment-debtor to furnish security. But in the present case, the deposit having been made within time no such question arises as is dealt with in the cases referred to. In the cases of *Jagan Nath v. Chet Ram* (1) and *Chhotey Lal v. Lakhmi Chand* (2) either no money was deposited, or if any deposit was made, it was not either within time or sufficient.

In the case of *Badlu Singh v. Panthu Singh* (3), mentioned above, it does not appear from the judgment of the single Judge whether the payment into court of cash was within time or beyond time. If the learned Judge meant to hold that if money is deposited within time, even then the application for restoration is to be dismissed, we are unable to agree with that view.

Our attention has been drawn to the cases of *Jeun Muchi v. Budhiram Muchi* (4) and *Assan Mohamed Sahib v. Rahim Sahib* (5). We think that the view adopted in those cases is sound. Under the circumstances we dismiss this application with costs.

(1) (1906) I. L. R., 28 All., 470. (2) (1916) I. L. R., 38 All., 425.

(3) (1922) 21 A. L. J., 173. (4) (1904) I. L. R., 32 Cal., 339.

(5) (1920) I. L. R., 43 Mad., 579.