REVISIONAL CIVIL.

Before Sir Louis Stuart, Knight, Chief Judge.

1929 August, 29.

NARAIN (PLAINTIFF-APPLICANT) *v.* RUDAN (DEFENDANT-OPPOSITE-PARTY.)*

Provincial Small Cause Courts Act (IX of 1887), section 17 —Ex parte decree, setting aside of—Application for setting aside ex parte decree made without filing security but deposit made or security filed within limitation, effect of.

The provisions of section 17 of the Provincial Small Cause Courts Act are mandatory.

If, however, an application under section 17 for setting aside an *ex parte* decree is filed without security but is subsequently completed, within the time prescribed by the law of limitation for making the application, by the deposit of the decretal amount or filing of security, the applicant has a right to have his application heard on the merits. *Jean Muchi* v. *Budhiram Muchi* (1), and *V. M. Assan Mohammad Sahib* v. *M. E. Rahim Sahib* (2), followed. *Dunia Din* v. *Farzand Husain* (3), and *Jagannath* v. *Chet Ram* (4), explained.

The Assistant Government Advocate. (*Mr. H. K. Ghose*), for the Crown.

Messrs. *Daya Kishan Seth* and *Narayan Lal*, for the applicant.

Mr. *Rudra Datt Sinha*, for the opposite party.

STUART, C.J. :—The question raised in this application is of importance. The application is under section 25 of the Provincial Small Cause Courts Act of 1887. The facts are these. Narain obtained a decree against Rudan on the 4th of February, 1929. This was an *ex parte* decree passed by a Court of Small Causes.

*Section 25 Application No. 46 of 1929, against the order of Pandit Hari Kishan Kaul, Munsif, North of Unao, Judge of Small Cause Court, Unao, dated the 8th of July, 1929, setting aside the *ex parte* decree passed in favour of plaintiff-applicant.

(1) (1904) I. L. R., 32 Calc., 339. (2) (1920) I. L. R., 43 Mad., 579.
(3) (1926) 3 O. W. N., 621. (4) (1906) I. L. R., 28 All., 470.

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It has been found as a fact that Rudan did not receive any information as to the passing of this decree against him until the 12th of April, 1929. On the 19th of April, 1929, Rudan presented an application to the Small Cause Court passing the decree for the setting aside of the *ex parte* decree. The application was dated the 17th of April, 1929, but presented two days later. The Small Cause Court Judge, in view of the provisions of section 17 of the Provincial Small Cause Courts Act, refused to entertain the application, as neither the amount due under the decree had been deposited in the court nor had security been tendered, and the application remained without orders. On the 25th of April, 1929, Rudan deposited the decretal amount and the application was then registered for the first time. The period of limitation for the setting aside of the *ex parte* decree on these facts did not expire till the 12th of May, 1929. The Small Cause Court Judge has set the decree aside and the present application requests that his order be reversed, on the ground that inasmuch as the decretal amount was not deposited on the 19th of April, 1929, the application for setting aside the *ex parte* decree failed automatically on that date. The view that the provisions of section 17 of the Provincial Small Cause Courts Act allow the court a discretion to admit an application in which neither the decretal amount is deposited nor security is tendered was taken at one time by the Judicial Commissioner's Court of Oudh and by the High Court of Madras. But in the decision in *Dunia Din* v. *Farzand Husain* (1) I accepted, as against that view, the view taken in *Jagannath* v. *Chet Ram* (2) in which it was laid down that the deposit of the decretal amount or the furnishing of security is a condition precedent to the entertaining of an application to set aside an *ex parte* decree passed by a Small Cause

(1) (1926) 3 O. W. N., 621. (2) (1906) I. L. R., 28 All., 470.

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Court under the Provincial Small Cause Courts Act and that the provisions of section 17 are mandatory. It is to be noted that the Madras High Court no longer accepts the former view. A Full Bench of the Madras High Court decided in *V. M. Assan Mohammad Sahib* v. *M. E. Rahim Sahib* (1) that the provisions of section 17 as to the deposit of the decretal amount are mandatory. I again find that the provisions are mandatory. But this does not determine the matter. It is to be noted that in the decision in *Jagannath* v. *Chet Ram* (2) the deposit was not made until the application was beyond time, and the Bench of the Allahabad High Court which decided that application cannot be taken as going further than saying that when a decretal amount is deposited after the time for filing an application for setting aside the decree has expired the application must fail. It is to be noted that in my decision in *Dunia Din* v. *Farzand Husain* (3), the money was also not deposited until the period for making the application had expired. In *Jeun Muchi* v. *Budhiram Muchi* (4) a Bench of the Calcutta High Court while holding the view that the provisions of section 17 were mandatory, laid down that if an application under section 17 was filed without security and was subsequently completed within the time prescribed by the law of limitation for making the application by the deposit of the decretal amount or filing of security, the applicant had a right to have his application heard on the merits. This view was followed by the Full Bench of the Madras High Court in the decision in *V. M. Assan Mohammad Sahib* v. *M. E. Rahim Sahib* (5) to which I have already referred. They laid down :—

> "But the deposit of the decretal amount may be made or the security given within the

(1) (1920) I. L. R., 43 Mad., 579. (2) (1906) I. L. R., 28 All., 470.
(3) (1926) 3 O. W. N., 621. (4) (1904) I. L. R., 32 Calc., 339.
(5) (1920) I. L. R., 43 Mad., 579.

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period prescribed by the law of limitation.''

Now here not only was the amount deposited within the period prescribed by the law of limitation, but it appears to me further that no actual application was made until the 25th of April, 1929—the date on which the amount was deposited—for the court had refused to register the previous application as it was not accompanied by a deposit. I am in agreement with the Madras and Calcutta decisions to which I have referred. Apart from that in this individual case I take it that no actual application can be considered to have come into existence until the 25th of April, 1929. I, therefore, consider that the learned Judge of the Small Cause Court arrived at a correct conclusion on this point. I do not propose to interfere with his order on any of the other points raised before him. I, therefore, dismiss this application with costs. The order of stay is discharged.

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Appeal dismissed.

REVISIONAL CRIMINAL.

Before Sir Louis Stuart, Knight, Chief Judge.

KING-EMPEROR (COMPLAINANT) *v.* BHAGWATI PRASAD (ACCUSED.)*

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Evidence Act (I of 1872), section 124—Public officer under section 124, Evidence Act—Public servant—Station Master of a state railway, whether a public officer—Privileged statements, what are—Statements recorded by the station master of a state railway in the course of an inquiry, whether privileged under section 124 of the Evidence Act—Interlocutory orders in criminal matters—Revision, when lies against interlocutory orders in criminal matters.

The station master of a state railway is a public servant for the purpose of chapter IX of the Indian Penal Code under

*Criminal Reference No. 41 of 1929.