

1923.

MAHADEU  
PRASAD  
v.  
BISSESSAR  
PRASAD.  
  
JWALA  
PRASAD, J.

representation or undue influence in the matter of borrowing the sum of Rs. 19,000, yet the plaintiff took advantage of the circumstances in which the defendant was placed and agreed to lend him the said sum at an unusual rate of interest, much higher than the commercial or market rate.

Considering all the circumstances of the case we hold that the plaintiff is not entitled to a mortgage decree at the rate mentioned in the bond. We disallow the compound interest, and direct that Re. 1-4-0 *per cent. per mensem* simple interest be allowed.

[The remainder of the judgment is not material for the purposes of this report.]

Ross, J.—I agree.

*Decree modified.*

### REVISIONAL CIVIL.

*Before Das and Kulwant Sahay, J.J.*

RAMESHWERDHARI SINGH

v.

SADHU SARAN SINGH.\*

1923.

March, 7.

*Code of Civil Procedure, 1908 (Act V of 1908), section 151, Order VII, rule 11(c), Order IX, rule 9 and Order XLVII, rule 1—failure to pay deficit court-fee—plaint rejected—restoration of suit, whether court has power to grant—Review.*

Where a plaintiff fails to make good a deficit in the court-fee due on the plaint and the plaint is rejected the court has no power to restore the suit either under section 151 or under Order IX, rule 9, of the Code of Civil Procedure, 1908.

An order rejecting a plaint under Order VII, rule 11(c), is open to review.

Application by the defendants.

The facts of the case material to this report were as follows :—

The petitioners were the defendants in a suit filed against them by the opposite party in the Court below.

\*Civil Revision No. 361 of 1922, from an Order of Babu Kamala Prasad, Subordinate Judge of Shahabad, dated the 28th October, 1922.

On the 16th of March, 1922, the Court came to the conclusion that the court-fees paid by the plaintiffs upon the plaint were insufficient and the Court directed the plaintiffs to pay the deficit court-fees on or before the 19th April, 1922. On the 19th April, 1922, the plaintiffs were unable to comply with the order of the learned Subordinate Judge and they asked for time and the Court gave them time till the 20th of May only. On the 20th of May they again applied for time and the Court gave them time till the 22nd of June. On the 22nd of June the plaintiffs made another application for further time to enable them to pay the deficit court-fees. The Court declined to accede to their application and rejected their plaint under the provision of Order VII, rule 11 (c), of the Civil Procedure Code. Thereafter the opposite party presented an application under Order IX, rule 9, and section 151 of the Code for restoration of the suit.

It was contended before the Court by the petitioners that the only remedy of the plaintiffs was to apply under Order XLVII, rule 1, of the Civil Procedure Code and that neither Order IX, rule 9, nor section 151 gave any power to the Court to restore the suit after it had rejected the plaint and had signed the decree. The Subordinate Judge conceded that an application under Order IX, rule 9, was not maintainable. He also thought that the plaintiffs could not apply under Order XLVII, rule 1, of the Code. The reason that he gives for this opinion was as follows :

" It is clear from the language of the order of dismissal that the plaint was rejected under the provision of Order VII, rule 11 (c), though it is not clearly stated there. There is no special provision in the Code for an aggrieved party to get an order made under that rule to be considered and reviewed. "

Having rejected the contention of the petitioners that the only remedy of the plaintiffs was to apply under Order XLVII, rule 1, of the Code, the Subordinate Judge proceeded to consider whether he could give the plaintiffs any relief under section 151 of the Code. He came to the conclusion that there was power in the Court to restore the suit under section 151 of the Code and that in the circumstances he should

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exercise that power. He accordingly ordered that upon the plaintiffs depositing the deficit court-fees and paying Rs. 100 as costs to the defendants, the suit would be restored. The defendants moved the High Court.

*Sultan Ahmed* (with him *Susil Madhab Mullick* and *Jalqobind Prasad Sinha*), for the petitioners.

*P. K. Sen* (with him *Parmeshwar Dayal*), for the opposite party.

DAS, J. (after stating the facts as set out above, proceeded as follows):—

In my opinion there was no power in the learned Subordinate Judge to restore the suit under section 151 of the Code. The order rejecting the plaint under Order VII, rule 11 (c), of the Code, operated as a decree, and Order XX, rule 3, provides:

“That a judgment once signed shall not afterwards be altered or added to save as provided by section 152 or on review.”

There can be no doubt, in my opinion, that once an order of the Court is perfected, there is absolutely no power in that Court under its inherent jurisdiction either to alter or add to that order save as provided by section 151 or on review. The order passed by the learned Subordinate Judge must accordingly be set aside.

It is however contended by Mr. *P. K. Sen*, on behalf of the opposite party, that in coming to the conclusion that an application under Order XLVII, rule 1, of the Code, was not maintainable, the learned Subordinate Judge declined the jurisdiction which was vested in him by law.

Mr. *Sultan Ahmed*, on behalf of the opposite party, contends before us that in point of fact there was no application under Order XLVII, rule 1, before the Court, and that, therefore, we are at liberty to disregard the view of the learned Subordinate Judge expressed on this point. There is, in my opinion, no doubt that the learned Subordinate Judge had power to review his order rejecting the petition under Order VII, rule 11 (c). I do not say whether in the

circumstances of the case the learned Subordinate Judge would have been right in reviewing the order. That point is not before us and it is not right that we should express our opinion on it: but all that we do say is this, that there was complete power in the Court under Order XLVII, rule 1, of the Code, to review the order passed by it in rejecting the plaint under Order VII, rule 11 (c), of the Civil Procedure Code. It is quite true that there was no application on behalf of the opposite party asking the Court to deal with the application as an application under Order XLVII, rule 1, of the Code; but the Court having taken the view that it had no jurisdiction whatever to review its own order in rejecting the plaint, it was plainly impossible for the opposite party to ask the Court to deal with that application as an application for review.

In the circumstances I think that the opposite party should have an opportunity to ask the Court to deal with his application as an application for review under Order XLVII, rule 1, of the Code.

We set aside the order of the learned Subordinate Judge and direct that upon the opposite party paying the proper court-fees upon his application as an application for review the learned Subordinate Judge will proceed to deal with the application of the opposite party as an application for review.

The petitioners are entitled to the costs of this application.

The learned Subordinate Judge will proceed to deal with this application within a month from the time he receives the record from this Court. If within that time the court-fees are not paid by the opposite party upon the application considered as an application for review, his application will stand dismissed. If within the time allowed the court-fees are paid, the learned Subordinate Judge will proceed to dispose of the application without any further adjournment.

The record will be sent down forthwith.

KULWANT SAHAY, J.—I agree.

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