REVISIONAL CIVIL.

1925.

March, 18, 20.

Before Mullick and Kulwant Sahay, J.J.

ANANT POTDAR

v.

MANGAL POTDAR.

Code of Civil Procedure, 1908 (*Act V of* 1908), *Order XLVII, rule* 1—*appeal, dismissal of, for non-payment of printing costs—application to set aside dismissal, whether one for review—section* 151.

An application to set aside a dismissal of an appeal for failure to file the printing costs must be regarded as one for review under Order XLVII, rule 1.

Fatimunnissa v. *Deoki Pershad* (1), relied on.

Order XLI, rule 19, does not apply to such a case; and the words "for any other sufficient reason" in rule 1 of Order XLVII cover a case where there is a good ground for not filing the deficit printing costs.

A Court has no inherent power under section 151 to set aside its own orders whenever it chooses to do so, and the section is not applicable in every case in which there is no other remedy.

Application by the appellants.

The facts of the case material to this report are tated in the order of the Court.

M. N. Pal (for *Muhammad Yunus*), for the applicants.

MULLICK AND KULWANT SAHAY, J.J.—The facts of this case are as follows: On the 20th November, 1924, this Bench made an order in First Appeal no. 86 of 1924 that unless the printing costs were deposited within four days the appeal should stand dismissed without further reference to the Bench. The printing costs were not paid within the time prescribed and the appeal stood automatically dismissed on the 25th November. On the 18th December, 1924, an application was made by the appellant for permission

(1) (1897) I. L. R. 24 Cal. 950, F. B.

to pay the deficit costs. The stamp affixed upon the application is one of the value of Rs. 3 which would be the proper stamp if the application were regarded as one under Order XLI, rule 19, of the Civil Procedure Code. If, however, the appellant is required to file an application for review of judgment, half the fee payable on the original memorandum of appeal is required and the application is insufficiently stamped.

The earlier decisions of this Court proceed upon the decision in *Fatimunnissa* alias *Fanez Fatima* v. *Deoki Pershad* (1) which held that an application to set aside a dismissal of an appeal for failure to file the necessary list must be regarded as one for review under Order XLVII, rule 1. This authority would seem to govern the present case also and has been followed in the following cases:—

(1) Civil Review no. 36 of 1916, decided on the 8th June, 1917, by Roe and Jwala Prasad, J.J.

(2) M. J. C. 95 of 1918, decided on the 20th June, 1918, by Mullick and Thornhill, J.J.

(3) Review no. 31 of 1920, decided on the 11th August, 1920, by the Registrar as Taxing-Officer.

(4) M. J. C. 35 of 1924, decided on the 30th May, 1924, by Das and Ross, J.J.

(5) Review no. 16 of 1924, decided on the 10th June, 1924, by the Registrar as Taxing-Officer.

On the other hand the following cases since 1923 have taken the view that the appeal can be restored by an application under Order XLI, rule 19, read with section 151 of the Civil Procedure Code:—

(1) Review no. 35 of 1923, decided on the 19th April, 1924, by Jwala Prasad and Foster, J.J.

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(2) M. J. C. 24 of 1923 and Review no. 38 of 1923, decided on the 15th April, 1924, by Jwala Prasad and Adami, J.J.

(3) Review no. 30 of 1924, decided on the 20th November, 1924 by the Registrar as Taxing-Officer.

If the decision in *Fatimunnissa alias Kanez Fatima* v. *Deoki Pershad*(1) is still good law, then the application under Order XLI, rule 19, does not lie. From the wording of the rule in question it is difficult to see how it can be applied to a case of default otherwise than by non-appearance. It may be said that the Full Bench decision of the Calcutta High Court was made before the present Code of Civil Procedure when an order dismissing a case by default was considered to be a decree. But it does not appear that the change in the definition of a decree really makes any difference for the purpose of this case.

What the party is really seeking is a reversal of an order, which, if it is not a decree, is certainly a judgment, and if the provisions for review do not apply, then there is no remedy at all given by the Code: Order XLI, rule 19, certainly does not seem to be applicable. We think the words " for any other sufficient reason " in rule 1 of Order XLVII will cover the case where there is good ground for not filing the deficit printing costs. If it does not, then the appellant has no remedy and we do not think section 151 of the Code becomes applicable in every case in which there is no other remedy. It does not appear that a Court has inherent power to set aside its own orders whenever it chooses to do so.

The application has to-day been stamped as an application for review and the necessary deficit fee has been paid. The fee will be kept in deposit and notice will issue upon the opposite party to show cause why the review should not be allowed.

(1) (1897) I. L. R. 24 Cal. 880, F. B.