APPELLATE CIVIL.

Before Dawson Miller, C.J. and Mullick, J.

1924.

Nov. 3, 4. 12.

RAGHUNANDAN SAHAY

v.

RAM SUNDER PRASAD.*

Code of Civil Procedure, 1908 (Act V of 1908), sections 148, 149 and Order VII, rule 11—Plaint filed within time on insufficient court-fees—application for time to make up deficit granted—intervention of vacation before expiry of extended time—fee not paid on re-opening but later.

Under section 148, Code of Civil Procedure, 1908, the court has power to extend the time fixed by a former order for the payment of deficit court-fees even after the plaint has been registered.

On the 11th September, 1919, a plaint was filed on a court-fee which was grossly deficient. On the 19th the plaintiff applied for, and was granted a week's time in which to make good the deficiency. Before the expiry of the week, however, *viz.*, on the 23rd September, the court closed for the vacation and did not re-open until the 27th October. The amount in deficit was tendered on the 29th October and accepted. The plaint was registered in November. Between the 11th September and the 29th October the period of limitation in respect of the claim expired.

Held, applying the maxim *omnia praesumuntur rite esse acta*, that the acceptance of the fee, although tendered late, and the subsequent registration of the plaint, amounted to an exercise of the court's discretion to allow the deficiency to be paid on the day when it was tendered and, therefore, that the suit was not barred by limitation.

Pawan Kumar Chand v. *Dulari Koer*(1), approved.

Ram Sahay Ram Pandey v. *Kumar Lachmi Narayan Singh*(2), distinguished.

* Second Appeal no. 1523 of 1921, from a decision of B. Phanindra Lal Sen, Subordinate Judge, Arrah, dated the 8th August, 1921, modifying the decision of M. Syed Raziuddin, Munsif, Arrah, dated the 7th October, 1920.

(1) (1920) 1 Pat. L. T. 541: 38 Ind. Cas. 216.

(2) (1918) 3 Pat. L. J. 74.

Mussammat Dukhno v. *Munshi Sahu*(1) and *Padmanand Singh* v. *Anant Lal Misser*(2), referred to.

In exercising its discretion under section 149, Code of Civil Procedure, 1908, the court should consider the question of limitation.

The direction in Order VII, rule 7, that the court should reject the plaint in certain cases where a previous order has not been complied with, should be carried out whether limitation has begun to run or not.

Appeal by the defendants 1 to 3.

Cross-appeal by the plaintiff.

This was an appeal from a decree of the Subordinate Judge of Arrah modifying the decree of the trial Court. It arose out of a suit for recovery of arrears of *manhunda* rent for the years 1323 to 1326, *F.* The first three defendants in the suit were the appellants There was also a cross-appeal by the plaintiff.

The plaintiff claimed rent for the years in suit at 38 *maunds*, 2 *seers*, of grain, *per annum* in respect to the holding, which measured 15 *bighas*, 6 *kattahs*, of land. Damages were also claimed.

The plaintiff's case was that the market rate of the crop was 20 *katcha seers* to the rupee for the years 1323 to 1325 and 10 *katcha seers* to the rupee for the year 1326. The defence was that the rent was a money rent of Rs. 2-11-0 *per bigha* and not a *raibandi manhunda* rent as claimed. The market rate and the kinds of crops grown were also disputed and it was pleaded that the claim was time-barred in respect to the year 1323.

The Munsif found that the rent was a produce rent and not a money rent but that it was 35 *maunds*, 15 *seers*, as recorded in the survey *khatian*, which was rather less than the plaintiff claimed, and that the plaintiff was not entitled to more although the area

(1) (1919) 4 Pat. L. J. 428. (2) (1907) I. L. R. 34 Cal. 20.

1924.

RAGHU-NANDAN SAHAY v. RAM SUNDER PRASAD.

of the holding had slightly increased. It was found that certain crops were grown on the holding and as the market rate claimed was the rate of the cheapest crop the Munsif allowed the claim at that rate amounting to Rs. 424-2-6, together with damages at 12½ *per cent*. He also decided the issue of limitation in the plaintiff's favour.

On appeal by the defendants the Subordinate Judge affirmed the decision of the Munsif except on the question of limitation. He was of opinion that the claim was time-barred for the year 1323. He accordingly varied the decree of the trial Court by disallowing the claim for the first year's rent. From this decision the defendants 1 to 3 appealed and the plaintiff entered a cross-appeal against that part of the decree which disallowed the claim for the year 1323.

Cur. adv. vult.

Mahabir Prasad and *Sambhu Saran*, for the appellants.

Siveshwar Dayal, for the respondents.

Nov. 12.

DAWSON MILLER, C.J. (after stating the facts set out above, proceeded as follows): In so far as the appeal is concerned there is very little to be said. The matter would appear to be concluded by the findings of fact of the lower appellate Court. It was contended that there was no evidence adduced by the plaintiff to show the nature and quantity of the crops grown in each year and that he was therefore not entitled to any rent as there was no basis of calculation possible and secondly, that the Subordinate Judge erred in failing to consider the Commissioner's report which showed that no crops could grow on about 9 *bighas* of the land in suit. It must be remembered, however, that *manhunda* rent, as the Subordinate Judge points out, is a fixed amount not depending upon the total outturn of the crop grown. Further the plaint alleged

that five kinds of crops were grown and the evidence of the defendants' own witnesses as well as the Commissioner's report shows that such crops were in fact grown. There was therefore a basis upon which a money equivalent of the produce rent could be calculated and as the money equivalent claimed is based upon the market rate of the cheapest crop grown it cannot be contended either that there was no basis of calculation or that the amount allowed was excessive. There appears to me to be no ground whatever for interfering with the decision of the lower Courts upon this part of the case and the appeal, therefore, fails and is dismissed with costs

With regard to the cross-appeal the matter stands thus: The plaint was filed on the 11th September, 1919. This was admittedly in time to save limitation even for the first year's rent. The court-fee paid with the plaint was, however, deficient and grossly deficient. On the 19th September, upon an application to the Court, the Munsif allowed one week's time to pay the deficiency in the court-fee. On the 23rd September, before the week expired the Court closed for the vacation and re-opened again on the 27th October when the deficiency ought to have been made good. It was not, however, tendered in Court until the 29th October. It appears that it was accepted on that day without further order and subsequently, in November, the plaint was ordered to be registered. Sometime between the 11th September and the date when the deficit fee was paid the claim to the first year's rent became barred and the question for determination is whether, in the circumstances stated, section 149 of the Civil Procedure Code applies so as to give the plaint the same force and effect as if the fee had been paid in the first instance. Section 149 reads as follows:

"Where the whole or any part of any fee prescribed for any document by the law for the time being in force relating to court-fees has not been paid, the Court may, in its discretion, at any stage, allow the person, by whom such fee is payable, to pay the whole or part,

1924.

RAGHU-NANDAN SAHAY v. RAM SUNDER PRASAD.

DAWSON MILLER, C. J.

as the case may be, of such court-fee; and upon such payment the document, in respect of which such fee is payable, shall have the same force and effect as if such fee had been paid in the first instance."

In connection with this may be read section 148 which provides:

"Where any period is fixed or granted by the Court for the doing of any act prescribed or allowed by this Code, the Court may, in its discretion, from time to time, enlarge such period, even though the period originally fixed or granted may have expired."

Section 148 deals with the extension of the time granted by the Court for doing any act prescribed or allowed by the Code whereas section 149 deals with cases of non-payment of fees prescribed for documents by the Court-Fees Act and would apply to the fee payable on the plaint. In the former case the Court may extend the time originally granted by its own order; in the latter case the Court may allow the fee to be paid at any stage with the result that the defect in the plaint or other document shall upon payment be cured. It was urged that under section 149 the Court had no power to extend the period for payment beyond the time fixed by its original order. I cannot, however, accept this proposition. The Court may allow the fee to be paid at any stage and even if the argument should hold good with regard to that section I think section 148 would authorize the Court to enlarge the period originally fixed by its own order. The Court in the present case, acting under section 149, exercised its discretion and passed an order allowing the plaintiff to pay the court-fee within a week. That order was not complied with. In these circumstances, assuming that the Court, in its discretion, refused to extend the time for carrying out the order then Order VII, rule 11, of the Civil Procedure Code, would clearly apply. That rule provides that the plaint shall be rejected in certain cases including the case where the relief claimed is properly valued but the plaint, is written upon paper insufficiently stamped, and the plaintiff, on being required by the Court to supply the requisite stamp-paper within a time to be fixed by the Court, fails to do so. Assuming that no further

extension of time was granted and that the trial Court had done its duty, it would have rejected the plaint in accordance with the provisions of Order VII, rule 11. The Court, however, did not reject the plaint but two days after the period for payment had expired accepted the deficiency in the stamp-fee when tendered and ordered the plaint to be registered. The question, therefore, which presents itself is whether the acceptance of the fee, although tendered late, and the subsequent registration of the plaint, must be taken as an exercise of the Court's discretion to allow the deficiency to be paid on the day when it was tendered under section 149, or whether we must presume that the Court was unwilling to accept the fee but nevertheless failed to comply with its duty as prescribed by Order VII, rule 11. Now the rule of law applying to such cases appears to me to be embodied in the maxim *Omnia praesumuntur rite esse acta.* We cannot by the application of this maxim presume without any evidence that the Court had allowed the plaintiff to pay the fee at a late date, but the fact that the Court accepted the fee and ordered the plaint to be registered is evidence that it did allow it and we may therefore presume, in the absence of any evidence to the contrary, that it acted regularly and in the exercise of its discretion. The learned Subordinate Judge was of opinion that the registration of the plaint could not be regarded as a condonation of the failure to comply with the original order because he thought that as part of the claim at least was not time-barred the Court had no option but to register the plaint. With respect to the learned Judge this appears to me to be introducing an element which is extraneous to the question under consideration. It may well be that the Court in exercising its discretion under section 149 ought to consider the question of limitation but Order VII, rule 11, directs the Court to reject the plaint in certain cases where a previous order has not been complied with and this direction should be carried out whether limitation has begun to run or not. If the order has not been carried out and no further extension

1924.

RAGHUNANDAN SAHAY v. RAM SUNDER PRASAD.

DAWSON MILLER, C. J.

of time has been granted the Court must reject the plaint even though the period of limitation has not begun to run. To hold otherwise would be to render Order VII, rule 11, clauses (*b*) and (*c*), nugatory in cases where limitation had not begun to run, and there is nothing to limit the rule in this way. It cannot be said, therefore, that the Court was bound in the circumstances of this case to register the plaint if in fact the time for paying the deficiency in the stamp-fee had not been extended. The claim was for a certain amount and the stamp-fee was inadequate to cover that amount. The plaint was therefore insufficiently stamped within the meaning of Order VII, rule 11. The real question for determination is whether the Court in accepting the fee although paid after the period originally fixed for payment and in ordering the plaint to be registered was, within the meaning of section 149, allowing the person by whom such fee is payable to pay the whole or part of such fee. If the Court was so acting then the plaint must have the same force and effect as if the fee had been paid in the first instance. The learned Judge in arriving at his conclusion appears also to have been influenced by the consideration that the deficiency in the first instance was so large that the plaintiff must have been guilty of gross laches. This, however, was a matter for the trial Court to consider when the matter first came before it. On that occasion the trial Court, which must be presumed to have considered this question, undoubtedly extended the time for payment to another week and it does not appear to me that this question can be re-agitated after the trial Court has exercised its discretion in the first instance. The learned Subordinate Judge relied upon two decisions of this Court in support of the view expressed by him. The first was that of *Ram Sahay Ram Pandey* v. *Kumar Lachmi Narayan Singh* (1), the second was *Mussammat Dukhno* v. *Munshi Sahu* (2). I agree with every word that was said by Chamier, C.J., in the former case

(1) (1918) 3 Pat. L. J. 74. (2) (1919) 4 Pat. L. J. 428.

but the question there was whether, in the circumstances of that case, the Court should exercise its discretion under section 149 in favour of the appellant by allowing him to make good the deficiency in the stamp-fee on his memorandum of appeal which was filed on the last day of limitation. The question was not, as here, whether, in accepting a fee paid late and registering the plaint, the Court had in fact acted under section 149. The learned Chief Justice laid down certain principles which should guide the Court in exercising its discretion and in the result refused to extend the time and the memorandum of appeal was rejected. The wording of section 149 is significant. It provides that the Court may, in its discretion, at any stage, allow the deficiency to be made good. If this is done then the document, whether a plaint or any other document covered by the section, becomes as effective as if the proper fee had been paid in the first instance. It is of the utmost importance that questions of this sort should be left to the discretion of the Court which has to determine them in the first instance, and, although I am not prepared to go to the length of saying that in no case can that discretion be interfered with by an appellate Court, it should require a very strong case to entitle an appellate Court to interfere. In *Padamanand Sing* v. *Anant Lal Misser* (1) Maclean, C.J., in dealing with a case under the Code of 1882, where the facts were very similar to this case, said: "As a general rule I should hold that when once the Court has admitted and registered a plaint it cannot subsequently reject it. In the present case by the course it adopted the Court must be taken to have extended the time for paying the court-fee up to the 9th July when it was actually paid and accepted and to have treated this as the time fixed for payment of the deficit. The Court cannot go behind this. To allow it to do so might lead to the gravest injustice." The learned Chief Justice then points out the grave results which would follow from allowing the plaintiff

(1) (1907) I. L. R. 34 Cal. 20

1924.

RAGHU-NANDAN SAHAY v. RAM SUNDER PRASAD.

DAWSON MILLER, C. J.

to incur the expense of a trial and at a late stage have the plaint rejected when possibly a fresh suit would be barred by limitation. This he says would be a grave injustice attributable to the action of the Court itself which lulled the plaintiff into a sense of false security by admitting and registering his plaint. In the result in that case notwithstanding the opinion of the Chief Justice which I have just referred to the majority of the Bench thought the justice of the case would be met by treating the plaint as having been filed on the 9th July when the deficit was paid with the consequences which ensued as to limitation by so treating it. At that time, however, section 149 was not on the Statute book and had not to be considered. The only corresponding section in the Code of 1882 was section 582A which was applicable only to a memorandum of appeal or an application for review and gave the Court power to allow the deficiency in the stamp to be made good only in cases where the deficiency was due to a mistake.

The second case relied on by the Subordinate Judge, namely, *Mussammat Dukhno* v. *Munshi Sahu*(1) was a case where clearly no discretion was exercised at all in admitting an application under Order IX, rule 9, of the Civil Procedure Code, which was defective in many respects and which had been returned to have the defects made good within a time fixed. Further extensions of time for this purpose were granted but still the defects were not cured. More than two months after the first order was made although the defects had not been cured, the Munsif, without giving notice to the opposite party and in spite of the fact that the defects were called to his attention by the office ordered the application to be admitted and eventually allowed the application and restored the case to the list without once considering whether the application had been filed in time. It was argued that the Court had power to extend the time under section 148 and must be deemed to have done so. The Court, in the circumstances of

(1) (1919) 4 Pat. L. J. 428.

that case, did not accede to this argument and indeed a more grossly arbitrary exercise of discretion, if any discretion was exercised at all, could hardly be conceived for even when the application was admitted the defects had not been cured and the Court consisting of Atkinson and Manuk, J.J., very properly, if I may be permitted to say so, set aside the Munsif's order. That case does not appear to me to bear any analogy to the present where the facts are entirely different. In the present case the defect was cured within two days after the period allowed originally and the plaint was admitted and registered. I think a strong presumption arises that if the Court did not intend to extend the time further it would have rejected the plaint as it was bound to do under Order VII, rule 11, unless the time was extended. The only reasonable inference, until the contrary is shown, is that the Court intended to act according to law and that in accepting the deficiency and registering the plaint it did in fact, in its discretion, extend the time. I have referred somewhat at length to the question for determination because under the earlier Code and before section 149 was introduced into the Code of 1908 there were many conflicting decisions dealing with questions of this nature and although section 149 was doubtless meant to set at rest the previous conflict there appears still to arise occasionally some doubt as to the effect of the provisions contained in the present Code. It would, however, be sufficient for the purposes of this case to say that so far as this Court is concerned the question now under discussion arose and was determined in the case of *Pawan Kumar Chand* v. *Mussammat Dulari Kuar* (1). There the facts were very similar to the facts of this case. The plaint was filed on the 27th May, 1918, but there was a deficit in the court-fee. An order was passed to pay the deficiency within a week It was not paid and on the 6th June the time was extended for three days more. Still the deficit was not paid by the 9th June. It was, however, paid about

(1) (1920) 1 Pat. L. T. 544; 58 Ind. Cas. 216.

1924.

RAGHU-NANDAN SAHAY v. RAM SUNDER PRASAD.

DAWSON MILLER, C. J.

a week later and on the 17th June, the fee having been accepted, the plaint was registered. In these circumstances the Court assumed that the trial Court had extended the time from the 9th to the 17th June, for if it had not done so it would have rejected the plaint but this was not done and they held that by accepting the court-fee on the 17th June it had in fact extended the time for payment up to that date. In my opinion the cross-appeal must succeed and the plaintiff is entitled to his costs here and in the Court below.

MULLICK, J. (after stating the facts of the case, proceeded as follows): As regards the appeal, there is no substance in it. The Munsif's judgment shows that the land grows barley, gram, peas, linseed and mustard and one or two other winter crops. He found that the cheapest of these crops sold at an average of 20 *katcha seers* to the rupee during the years in suit and at this rate the price of 35 *maunds*, 10 *seers*, would be Rs. 84-13-6. The Subordinate Judge accepted this rate and the defendant has no ground whatsoever for complaint. If each crop had been separately valued the annual rate would have been higher. The appeal is, therefore, dismissed with costs.

With regard to the cross-appeal, it appears that on the 11th September, 1919, the plaint bore a court-fee stamp of only Re. 1-2-0 and the balance of Rs. 40-2-0 was not paid till the Court re-assembled after the Civil Court vacation. On the 19th September, 1919, the Munsif ordered that the deficit court-fee should be paid within a week. The Court closed for the long vacation before the expiry of the time thus allowed and re-opened on the 27th October, 1919. The deficit court-fee appears to have been received on the 29th October, 1919, although no extension of the time of payment was expressly recorded and the presiding officer ordered the plaint to be registered on the 13th November, 1919.

The learned Subordinate Judge does not find definitely that the Munsif did not extend the time,

1924.

RAGHU-NANDAN SAHAY v. RAM SUNDER PRASAD.

MULLICK, J.

On the other hand, the learned Vakil for the cross-appellant, relying on *Budhan Sha* v. *Sita Nath Sha* (1) contends that as no express order extending the time was recorded the payment of the deficit court-fee on the 29th October and the registration of the plaint on the 13th November cannot serve to validate the plaint with effect from the 11th September. In my opinion the acceptance of the deficit court-fee after the time fixed for its payment and the registration of the plaint are facts from which it is open to a Court to draw the inference that the presiding officer did condone the delay and grant the extension; and it was so held in *Pawan Kumar Chand* v. *Dulari Koer* (2), an authority which is binding upon this Court. I think, therefore, that there was evidence in the present case upon which the Munsif was competent to come to a finding that an extension of time was granted under sections 148 and 149 of the Code of Civil Procedure. The learned Subordinate Judge has not in clear terms displaced that finding. He seems rather to be of the opinion that the Munsif did grant an extension but that in doing so he exercised his jurisdiction wrongly. Now the learned Subordinate Judge would certainly have been competent to interfere if the Munsif who accepted the plaint had failed to exercise his discretion judicially, *i.e*, if he had exercised his discretion arbitrarily or had misdirected himself on any question of law or fact [*Brij Indra Singh* v. *Kanshi Ram* (3)]. Here no such error being disclosed it was not open to any Court to re-open the question of the legality of the plaint.

The result is that the cross-appeal succeeds and is decreed with costs in this Court and in the Court below.

Appeal dismissed.

Cross-appeal decreed.

(1) (1911) 13 Cal. L. J. 78.
(2) (1920) 1 Pat. L. T. 544; 58 Ind. Cas. 216.
(3) (1919) I. L. R. 45 Cal. 107, P.C.