

**REVISIONAL CIVIL.***Before Khaja Mohamad Noor and Agarwala, J.J.*

RAJESHWARI PRASAD SINGH

1933.

---

March, 10.

v.

BRAHMANAND LALL.\*

*Provincial Small Cause Courts Act, 1887 (Act IX of 1887), section 17—unregistered security bond duly executed, attested and stamped, filed along with application—security found sufficient and bond registered after period of limitation—whether sufficient compliance with law—“security”, significance of.*

Where an unregistered security bond duly executed, stamped and attested, was filed along with the application for setting aside a Small Cause Court decree, and the security having been found sufficient by the court, the bond was registered after the expiry of the period of limitation for filing the application, the delay in getting it registered not being due to any fault of the applicant himself.

*Held*, that there was sufficient compliance with the provisions of section 17 of the Provincial Small Cause Courts Act, 1887.

*Ram Charitarr Ram v. Hashim Khan*(1), *Bishun Dayal Thakur v. Sheotahal Sahoo*(2) and *Kauleshwar Lal v. Satya Brata Banerji*(3), referred to.

*Per* AGARWALA, J.—(i) The word “security”, occurring in the first clause of section 17 of the Provincial Small Cause Courts Act, is not a word which has been defined either in this Act or in the General Clauses Act. Generally speaking, that word signifies anything that makes the money more assured in its payment or more readily recoverable;

(ii) when once the Judge accepts a bond as security, it is not open to the Court subsequently to say that the security is not to its satisfaction.

---

\* Civil Revision no. 643 of 1932, from an order of Babu Radha Krishna Prasad, Small Cause Court Judge of Arrah, dated the 19th of September, 1932.

(1) (1920) 1 Pat. L. T. 323.

(2) (1921) 62 Ind. Cas. 108.

(3) (1925) 7 Pat. L. T. 138.

1933.

## Application in revision by the defendant.

RAJESHWARI  
PRASAD  
SINGH  
v.  
BRAHMA-  
NAND  
LALL.

This application in revision was directed against an order of the Small Cause Court Judge of Arrah, refusing to set aside an *ex parte* decree, passed against the applicant, on the 2nd of October, 1931. The application to set it aside was filed on the 8th January, 1932, the defendant-applicant's case being that he came to know of the decree on the 12th of December, 1931, when he was arrested in execution of that decree. The Small Cause Court Judge rejected the application on two grounds: first, that though the service of summons on the defendant-applicant was not proper, the defendant nevertheless had knowledge of the suit and the application not having been filed within thirty days of the decree, it was barred by limitation; and secondly, that the defendant-applicant did not comply with the provisions of section 17 of the Provincial Small Cause Courts Act, inasmuch as he did not furnish security either with the application, or, at any rate, before the expiry of the period of limitation for filing the application.

*B. P. Sinha*, for the petitioner.

*Mahabir Prasad* and *Tarkeshwar Nath*, for the opposite party.

KHAJA MOHAMAD NOOR, J. (after stating the facts set out above proceeded as follows:)—As to the first point, under Article 164 of the Indian Limitation Act an application to set aside an *ex parte* decree must be filed within thirty days from the date of the decree or, where the summons has not been duly served, from the date of the applicant's knowledge of the decree. In the present case the application is obviously not within thirty days of the decree; but as there is a clear finding of the learned Small Cause Court Judge that the summons was not duly served on the applicant, the applicant did come within the second part of the Article, and he was entitled to come within thirty days of his knowledge of the decree. The learned Small Cause Court Judge

is in error when he expects the application within thirty days of the knowledge of the suit. The period is to be counted from the date of the knowledge of the decree, and not from the date of the knowledge of the suit. This point need not be pursued further as in my opinion the decision of the learned Judge is obviously wrong.

The next question is whether the applicant has complied with the provisions of section 17 of the Provincial Small Cause Courts Act. It appears that along with his application the applicant filed a duly executed security bond. On that day the Court adjourned passing order on that bond, but later ordered an enquiry as to the sufficiency of the security offered, indicating that it was prepared to accept the security of property if it was found to be sufficient; and that it did not insist on cash security. There was a long delay in conducting the enquiry. Ultimately the security was found sufficient and the bond was registered on the 2nd of May, 1932, and accepted by the Court. The learned Small Cause Court Judge is in error in thinking that what was filed along with the application on the 8th of January, 1932, was a draft bond on a plain piece of paper. We have examined the bond ourselves. It was, as I have said, a properly executed security bond on a stamped paper. The learned Advocate for the opposite party has, however, drawn our attention to the fact that on the margin of the bond where the signature of the executant appears, there is a date given "2nd May 1932" and he suggests that the bond was executed on that day. I am satisfied that this is not so. The bond bears the date '5th of January, 1932'. It was registered on the 2nd of May, 1932, after the Court on due enquiry accepted it and directed it to be registered. It appears from the order-sheet that the document was taken out from the Court for registration and there perhaps at the instance of the officers of the Registration Department the date of execution was to be given and so the date "2nd May, 1932" has been mentioned.

1933.

RAJESHWARI  
PRASAD  
SINGH  
v.  
BRAHMA-  
NAND  
LALL.

KHAJA  
MOHAMMAD  
NOOR.  
J.

1933.

RAJESHWARI  
PRASAD  
SINGH  
".  
BRAHMA-  
NAND  
LALL.  
  
KHALA  
MOHAMAD  
NOOR.  
J.

The ink of that date is obviously different from the ink of the execution signature. That a properly executed and attested unregistered security bond was filed along with the application admits of no doubt. Now the question is what is the effect of filing an unregistered security bond of which the registration was not completed till after the period of limitation for filing the application. Unfortunately there is no case law on this point. It has been held in a large number of cases in Calcutta and in some decisions of several learned Judges of this Court sitting singly that the provisions of section 17 of the Act are mandatory; that the Courts have no power to extend time for furnishing security; and that security, either cash or in any other form which the Courts approve, must be filed within the period of limitation. With all this, if I may say so, I entirely agree. As to decisions of this Court, see *Ram Charittar Ram v. Hashim Khan*(1) and *Bishun Dayal Thakur v. Sheotahal Sahoo*(2). I also respectfully agree with the decision of Sen, J. in *Kauleshwar Lal v. Satya Brata Banerji*(3) that filing of a draft security bond is not sufficient compliance with the provisions of section 17 of the Small Cause Courts Act. But here the question is, whether a duly executed bond (though not registered but subsequently registered) is a sufficient offer of security within the meaning of section 17 of the Small Cause Courts Act. In my opinion the criterion is this. Was the security which the party placed in the hands of the Court and which the Court ultimately accepted sufficient to enforce the obligation upon him? Judged by this test an unregistered security bond is, in my opinion, sufficient compliance with the law, provided that the delay in getting it registered is not due to any fault of the applicant himself. In this case the applicant placed himself in the hands of the Court by giving the Court a fully executed bond. Once he did so he could have been compelled to register it under the

(1) (1920) 1 Pat. L. T. 323.

(2) (1921) 62 Ind. Cas. 108.

(3) (1925) 7 Pat. L. T. 138.

provisions of the Registration Act and the liability of the security bond could have been enforced against him. It was open to the Court to call upon the applicant to have the document registered there and then; but the Court deferred passing orders till it was satisfied as to the sufficiency of the security and the document was registered within the time allowed by the law for registration of duly executed documents. An applicant who instead of giving security in cash gives it in property, he does so at his own risk. If later on the security offered is found to be insufficient and the Court rejects it on that ground, the applicant will have to suffer its consequences. But in this case, as I have said, a properly executed bond was offered and the Court by its order indicated that it was prepared to accept it provided the security was sufficient. The security was found sufficient and the document was registered. There was, in my opinion, sufficient compliance with the law.

Both the grounds on which the application was rejected by the learned Judge in the Court below fail. I would allow the application, set aside the ex parte decree and direct that the suit be restored to its original order and disposed of according to law.

AGARWALA, J.—I entirely agree. With respect to the construction of the phrase “security to the satisfaction of the Court”, occurring in the first clause of section 17 of the Provincial Small Cause Courts Act, I would only add that the word ‘security’ is not a word which has been defined either in this Act or in the General Clauses Act. Generally speaking, that word signifies anything that makes the money more assured in its payment or more readily recoverable. In the present case the bond that was tendered as security, as has already been pointed out by my learned brother, was properly executed, stamped and attested, and it was filed within the time allowed by law. The Court before which it was filed accepted the bond as security and directed the applicant to

1933.

RAJESHVARI

PRASAD

SINGH

v.

BRAHMA-

NAND

LALL.

KHAJA

MOHAMAD

NOOR, J.

1933  
 RAJESHWARI  
 PRASAD  
 SINGH  
 v.  
 BRAHMA-  
 NAND  
 LALL.  
 AGARWALA,  
 J.

register it. Unfortunately the application for restoration of the suit subsequently came up for disposal before another Judge who had taken the place of the Judge who had accepted the security, the latter having been transferred, and probably this has brought about the present state of affairs. In my view, the first Judge who dealt with the matter having accepted the bond as security, it was not open to the Court subsequently to say that the security was not to its satisfaction.

*Rule made absolute.*

### SPECIAL BENCH.

*Before Kulwant Sahay, Macpherson and Khaja Mahomed Noor, JJ.*

JADUNANDAN SINGH

v.

SRIMATI SAVITRI DEVI.\*

1933.  
 Feb. 13, 14.  
 March, 16.

*Revenue Sales Act, 1859 (Act XI of 1859), sections 2 and 3—kistbandi date and latest date, distinction between—kist date, significance of—original kistbandi fixed according to Fasli era—7th June latest date under section 3—payment not made on 7th June—sale held in September, whether valid.*

In Bihar the *kistbandis* fixed under the engagement entered into with the proprietors for payment of the Government revenue were almost invariably according to the Fasli era, and the four dates in June, September, January and March fixed for the payment of the Government revenue are the latest dates of payment determined by the Board of Revenue under section 3 of the Revenue Sales Act, 1859.

Where the original *kistbandi* under section 2 of the Act is unknown and forgotten, the latest dates fixed under section 3 are popularly known as the kist dates. They are not the

\* Appeal from Appellate Decree no. 1597 of 1931, from a decision of D. P. Sharma, Esq., I.C.S., Officiating Additional District Judge of Monghyr, dated the 3rd October, 1931, reversing a decision of Maulavi Abdul Aziz, Additional Subordinate Judge of Monghyr, dated the 4th March, 1929.