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of the Code each in one hundred rupees with one surety of Rs. 100 to keep the peace for one year, in default of which they will suffer simple imprisonment for that period. The substantive sentences on Raghunath Singh, Jitan Singh, Ramdutt Singh and Suchit Singh will be reduced to four months' rigorous imprisonment each, and those on the remaining petitioners with the exception of Moti Singh, to sentences of two months' rigorous imprisonment.

SAUNDERS, J.—I agree.

*Order accordingly.*

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### REVISIONAL CIVIL.

*Before Agarwala and Varma, JJ.*

MAHANTII RAGHUNANDAN GIR

*v.*

GOSAIN DEORAJ GIR.\*

*Code of Civil Procedure, 1908 (Act V of 1908), section 115—Court-fee—Decision that court-fee paid was sufficient, if revisable—Interlocutory order—revision.*

The plaintiff sued for certain reliefs and paid a court-fee of Rs. 15 as in a suit for a mere declaration of title. The Subordinate Judge overruled the defendant's objection that the court-fee paid was insufficient.

*Held*, that the order was not revisable. The general practice of the High Court is not to interfere in revision with interlocutory orders unless in exceptional circumstances when such order may result in irreparable injury to one or other of the litigant parties. An order permitting a suit to proceed does not injure the defendant as, ordinarily, his costs are payable by the plaintiff if the suit fails.

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\*Civil Revision no. 117 of 1935, from an order of Babu B. N. Das, Subordinate Judge, 2nd Court, Gaya, dated the 15th January, 1935.

*Kanhaya Lal v. Baldeo Lal*(1), *Muhammad Elliyas v. Rahima Beet*(2), *Kalliya Pillai v. Ramaswamy Pillai*(3), *Lala Balkrishna v. Rankishan*(4), *G. M. Falkner v. Mirza Mahomed Syed Ali*(5), *Secretary of State for India in Council v. Raghunathan*(6), *Kumar Rankinkar Singh v. Kumar Jogendra Nath Singh*(7) and *Sham Narain Singh v. Basudeo Prasad Singh*(8), followed.

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*Ram Bhusan Das v. Bachu Rai*(9), not followed.

Where a suit is allowed to proceed on an insufficient court-fee it is not either of the litigant parties who suffers but the revenue. It is not the object of a fiscal statute to enable litigants to be defeated on technicalities.

*Ruchappasubrao v. Shidappa Venkatrao*(10), relied on.

Application in revision by defendant no. 1.

The facts of the case material to this report are set out in the judgment of Agarwala, J.

*Sir Sultan Ahmed* and *K. N. Varma*, for the petitioner.

*T. N. Sahay* and *N. K. Prasad II*, for the opposite party.

AGARWALA, J.—This is an application to revise an interlocutory order passed by the Subordinate Judge of Gaya in the following circumstances:—

The plaintiff-respondent sued to obtain certain reliefs and on the plaint paid a court-fee of Rs. 15 as in a suit for a mere declaration of title. The defendant thereupon petitioned the court to determine

(1) (1924) 85 Ind. Cas. 538.

(2) (1928) 114 Ind. Cas. 842.

(3) (1929) 119 Ind. Cas. 35.

(4) (1929) 121 Ind. Cas. 97.

(5) (1924) 29 Cal. W. N. 627.

(6) (1933) I. L. R. 56 Mad. 744.

(7) (1935) 16 Pat. L. T. 158.

(8) (1930) 11 Pat. L. T. 172.

(9) (1934) I. L. R. 14 Pat. 220.

(10) (1918) I. L. R. 43 Bom. 507.

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the question of valuation of the suit and the sufficiency of the court-fee paid. The learned Subordinate Judge proceeded to accede to this request and on a consideration of the matter decided that the court-fee paid was sufficient. Against that order the defendant has moved this Court. The matter first came before a single Judge who referred it to a Division Bench on account of the lack of uniformity in rulings of the Court in regard to interference in revision in court-fee matters. In so far as orders in favour of the plaintiff are concerned, there appears to be consensus of opinion of all the Courts that such an order is not revisable [see *Kanhaya Lal v. Baldeo Lal*(<sup>1</sup>), *Muhammad Elliyas v. Rahima Bee*(<sup>2</sup>), *Kalliyai Pillai v. Ramaswamy Pillai*(<sup>3</sup>), *Lala Balkrishna v. Ramkishanu*(<sup>4</sup>), *G. M. Falkner v. Mirza Mahomed Syed Ali*(<sup>5</sup>) and *Secretary of State for India in Council v. Raghunathan*(<sup>6</sup>)]. In the last mentioned case, the learned Chief Justice at page 748 said,

“ No case has been referred to where this High Court or any other High Court has held that, where a favourable decision has been given as regards court-fee to the plaintiff, the High Court will exercise its revisional powers. I am clearly of the opinion that in such cases the High Court has no power of revision either under section 115 of the Code of Civil Procedure or under section 107 of the Government of India Act.”

The applicant relies on certain observations in the case of *Ram Bhusan Das v. Bachu Rai*(<sup>7</sup>). That was a case in which an order had been passed against the plaintiff and it was the plaintiff who moved the High Court. There are observations in the judgment

(1) (1924) 85 Ind. Cas. 538.

(2) (1928) 114 Ind. Cas. 842.

(3) (1929) 119 Ind. Cas. 35.

(4) (1929) 121 Ind. Cas. 97.

(5) (1924) 29 Cal. W. N. 627.

(6) (1933) I. L. R. 56 Mad. 744.

(7) (1934) I. L. R. 14 Pat. 220.

suggesting a distinction between cases in which the order of the Court is merely concerned with the question of valuation and cases in which the order of the Court is concerned with the category into which the plaintiff's suit falls. It was held that in the latter class of cases the order is revisable by the High Court under section 115. Those observations, however, were in the nature of obiter dicta, for the plaintiff's petition was rejected on its merits. In *Sham Narain Singh v. Basudeo Prasad Singh*<sup>(1)</sup> Wort and Kulwant Sahay, JJ. refused to entertain an application to revise an order in a court-fee matter even where the order was one calling upon the plaintiff to pay a large additional court-fee, as in such a case there is another remedy open to the plaintiff by way of appeal if his plaint is rejected for non-compliance with the order. With regard to this case, the learned Chief Justice in *Ram Bhusan Das v. Bachu Rai*<sup>(2)</sup> said:

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“ The report of that case gives no indication in itself as to the class of the decision which was given by the lower court. One may infer, however, from the facts that the learned Judges decided that revision did not lie and that the matter was really one of quantum and not of category. To my mind this case gives us no guidance in the matter. It is quite consistent with the Court having held that if it had been a case of the category under the section into which the suit fell, they might have been inclined to revise the decision.”

It is clear, therefore, that the learned Chief Justice was under the impression that the case of *Sham Narain Singh v. Basudeo Prasad Singh*<sup>(1)</sup> had been decided on the assumption that no question as to the category into which the suit fell was in issue in that case and that the only question which arose for

(1) (1930) 11 Pat. L. T. 172.

(2) (1934) I. L. R. 14 Pat. 220.

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decision was with regard to the quantum of court-fee. Wort, J., who was one of the Judges who decided the case in *Sham Narain Singh v. Basudeo Prasad Singh*,<sup>(1)</sup> referred to this matter in a later case, *Kumar Ramkinkar Singh v. Kumar Jogendra Nath Singh*<sup>(2)</sup>. His Lordship said,

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“ The learned Chief Justice in the case to which I have first referred has stated that the decision reported in *Sham Narain Singh v. Basudeo Prasad Singh*<sup>(1)</sup> might be explained on the basis that it came within that class of case which was not open to revision. But as a party to that judgment I must say that the matter there in dispute was whether the Judge had rightly decided what was the nature of the action brought by the plaintiff and therefore what was the proper court-fee: in other words, *what category did the case come within* ”.

It must be, therefore, now taken that in the earlier case of *Sham Narain Singh v. Basudeo Prasad Singh*<sup>(1)</sup> a Division Bench of this Court refused to interfere in a case in which the question arose as to the category into which the suit fell, even where the plaintiff had been called upon to pay a large additional court-fee, and that that decision is not explainable on the lines suggested by the learned Chief Justice in *Ram Bhusan Das v. Bachu Rai*<sup>(3)</sup>. Our attention has been called to no case in which any High Court has interfered in revision with an order in favour of the plaintiff resulting in his suit being permitted to proceed on the court-fee which he himself elected to pay. The general practice, not only in this High Court but in the other High Courts, is not to interfere with interlocutory orders unless in exceptional circumstances when such order may result in irreparable injury to one or other of the litigant parties. An order permitting a suit to proceed does not injure any

(1) (1930) 11 Pat. L. T. 172.

(2) (1935) 16 Pat. L. T. 158.

(3) (1934) I. L. R. 14 Pat. 220.

party. When a suit is allowed to proceed on an insufficient court-fee it is not either of the litigant parties who suffers but the revenue. It is not the object of a fiscal statute to enable litigants to be defeated on technicalities. In the case of *Rachappa-subarao v. Shidappa Venkatrao*(1) their Lordships of the Privy Council said,

“The Court-fees Act was passed not to arm a litigant with a weapon of technicality against his opponent but to secure revenue for the benefit of the State.”

Where an order in regard to court-fees happens to be in favour of the plaintiff, it does not mean that it is against the defendant though it may operate to the detriment of the revenue.

I see no reason for interfering with the order passed in the present case or for departing from the usual practice of this Court not to interfere in revision with interlocutory orders. The application is, therefore, dismissed with costs. Hearing fee two gold mohurs.

VARMA, J.—I agree.

*Rule discharged.*

## APPELLATE CIVIL.

*Before Macpherson and Khaja Mohamad Noor, JJ.*

SHEO BALAK PRASAD AWASTHI

*v.*

JUGAL KISHORE NARAIN.\*

*Code of Civil Procedure, 1908 (Act V of 1908), Order XXXIV, rule 6—preliminary mortgage decree based on compromise—stipulation that other properties could be sold if mortgage properties be not sufficient—application for personal decree, whether necessary.*

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November,  
15.  
December,  
21.

\*Appeal from Original Order no. 294 of 1934, from an order of Babu Gajadhar Prasad, Subordinate Judge of Chapra, dated the 5th October, 1934.

(1) (1918) I. L. R. 43 Bom. 507.