

APPEAL FROM ORIGINAL CIVIL.

1919

Nov. 24.

Before Mr. Justice Scott-Smith and Mr. Justice Wilberforce.

LEKH RAM (PLAINTIFF)—*Appellant*,
versus

RAMJI DAS (DEFENDANT)—*Respondent*.

Civil Appeal No. 3433 of 1915.

Court fee—appeal from a decree for redemption of a mortgage on payment of Rs. 62,293, the principal amount of which was Rs. 6,400—Court Fees Act, VII of 1870, section 7, clause IX and Schedule I, Article I—whether Court should allow appellant time to make up deficiency in Court-fee—Civil Procedure Code, Ac. V of 1908, section 149.

The plaintiff sued for redemption of 3 mortgages, of which the principal amount totalled to Rs. 6,400. He alleged that nothing remained due by him under the mortgages. The Court decreed redemption on payment of Rs. 62,293. Plaintiff appealed to this Court so far as the payment of money was concerned and valued his appeal for purpose of Court-fee at Rs. 6,400 and paid Court-fee accordingly. At the hearing of the appeal it was objected that the appeal was not properly stamped.

Held, that article I, schedule I of the Court Fees Act, applied to the appeal and not clause IX of section 7, and that the proper Court-fee was therefore *ad valorem* on the amount of the subject matter in dispute in the appeal.

Banwari Das v. Nathu Shah (1), *Chuni Lal v. Beli Ram* (2), *Mansa Ram v. Umra* (3), *Reference under Court Fees Act, 1870* (4) and *Nepal Bai v. Debi Prasad* (5), followed.

Pirbbu Narain v. Sita Ram (6) and Bombay unreported printed Judgments, 1891, page 218, disapproved.

Held also, that as the omission to pay the proper Court-fee was not due to a *bona fide* mistake but was deliberate the Court must decline to allow the appellant time under section 149 of the Code of Civil Procedure to enable him to make up the deficiency.

Ram Sahay Ram Pandey v. Lakshmi Narain (7), *Saidunnessa v. Tejendra Chandradhar* (8) and Civil appeal No. 285 of 1915 (unpublished), referred to.

(1) 5 P. R. 1911.

(2) 58 P. R. 1915.

(3) (1911) 11 Indian Cases 198.

(4) (1905) I. L. R. 29 Mad. 367.

(5) (1905) I. L. R. 27 All. 447.

(6) (1890) I. L. R. 13 All. 94.

(7) (1917) 42 Indian Cases 675.

(8) (1918) 44 Indian Cases 398

First appeal from the decree of E. R. Anderson, Esquire, Subordinate Judge, 1st Class, Hissar, dated the 21st August 1915 decreeing plaintiff's claim on payment of Rs. 62,293.

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GOKAL CHAND, for Appellant.

TEK CHAND, for Respondent.

The judgment of the Court was delivered by—

WILBERFORCE, J.—The plaintiff sued for redemption of three mortgages of which the principal amount totalled Rs. 6,400. He stated that more was due to him than he owed and asked for redemption either without payment or on receipt of what was due to him. The lower Court gave him a decree for redemption on payment of Rs. 62,293-11-9. He appealed against this decision to this Court and has valued his appeal for the purposes of Court-fee at Rs. 6,400 and has paid Court-fee accordingly.

Counsel for the respondent raises a preliminary objection that the appeal is not sufficiently stamped and he refers to *Banwari Das v. Nathu Shah* (1), *Chuni Lal v. Behi Ram* (2) (in which the former judgment was approved), *Mansa Ram v. Umra* (3), *Reference under Court Fees Act, 1870* (4) and *Nepal Rai v. Debi Prasad* (5) as authorities that Article I, First schedule of the Court Fees Act, applies to such cases and not clause IX of section 7. Against these authorities Counsel for the appellant relies upon *Pirbhu Narain v. Sita Ram* (6) and a judgment printed in Bombay unreported judgments, 1891, page 218. The former judgment was disapproved in *Nepal Rai v. Debi Prasad* (5) and the latter judgment appears to be one of little authority. We have no hesitation in agreeing with the previous judgments of this Court supported as they are by those of the Madras and Allahabad High Courts.

In view of our decision on the above point counsel for the appellant asks for one month's time to enable his client to pay the required Court-fee. This request is strongly opposed by counsel for respondent who argues on the authority of *Ram Sahay Ram Pandey*

(1) 5 P. R. 1911.

(2) 58 P. R. 1915.

(3) (1911) 11 Indian Cases 198.

(4) (1905) I. L. R. 29 Mad. 317.

(5) (1905) I. L. R. 27 All. 417.

(6) (1890) I. L. R. 13 All. 91.

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v. *Lakshmi Narain* (1), *Saidunnessa v. Tejendra Chandradhar* (2) and Civil Appeal No. 285 of 1915 decided in April 1919 that a Court would not in its discretion under section 149, Civil Procedure Code, grant time for the deficiency to be made up unless it was satisfied that some grounds existed for the exercise of its discretion and that the principal ground would ordinarily be that a *bona fide* mistake had been made. Counsel contends that in the present case there was no *bona fide* mistake but a deliberate attempt in the face of counsel's undoubted acquaintance with the law either to avoid payment of sufficient Court-fee or to defer the day of payment as long as possible.

In reply to these arguments Mr. Gokal Chand states that when filing the appeal he consulted the law upon the subject and found the unreported Bombay case and the Allahabad case and considered them authorities of some value in spite of the existence of Punjab and other judgments. We cannot believe that a counsel of the experience and qualifications of Mr. Gokal Chand could have had the remotest doubt as to the law governing his case. Objections were taken by the office when the appeal was put in, and he must have studied the law with great care especially when he discovered the somewhat obscure Bombay judgment. At the time when he put in his appeal, as far as this Court is concerned, not only was the law laid down in *Banwari Das v. Nathu Shah* (3) but this judgment had been approved in *Chuni Lal v. Beli Ram* (4) and another judgment of this Court *Mansa Ram v. Umra* (5) was undoubtedly known to counsel. The plain facts of the matter are that the appellant, who appears to be somewhat impoverished, to suit his own convenience deferred the payment of Court-fee in spite of the knowledge conveyed to him by his counsel of the correct fee payable. So far therefore from a *bona fide* mistake having been made the omission in this case was deliberate. We therefore agree with the contentions and authorities cited by counsel for the respondent that this is not a case in which an extension of time should be granted.

(1) (1917) 42 Indian Cases 6. 5.

(3) 5 P. R. 1911.

(2) (1918) 44 Indian Cases 398.

(4) 58 P. R. 1915.

(5) (1911) 11 Indian Cases 193.

We dismiss the appeal with costs recoverable from the mortgaged property. The reason for this order will be apparent from our decision in respondent's cross-appeal.

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Appeal dismissed.

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Before Mr. Justice Shadi Lal.

RUP RAM, LIQUIDATOR, PUNJAB BUILDING
 COMPANY—*Appellant,*

versus

FAZAL DIN—*Respondent.*

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 May 24.

Miscellaneous Civil Appeal No. 2325 of 1918.

Indian Companies Act, VII of 1913, sections 158 and 269—Contributory—suit brought by the Company against alleged contributory before order for compulsory liquidation—dismissed in default—whether bar to subsequent application to have that person placed on list of contributories—Civil Procedure Code, Act V of 1908, order 9, rule 8.

The Punjab Building Company went into voluntary liquidation and the voluntary Liquidator brought a suit against F. D., the present respondent, for recovery of a certain sum alleged to be due to the Company by reason of his being a shareholder. The respondent denied liability and the suit was dismissed in default on 15th May 1918. An application by a creditor had previously been made for compulsory winding up which was granted on 8th March 1918. The Official Liquidator then sought to place the respondent on the list of contributories of the Company, and the question was whether the dismissal of the suit in default precluded the Liquidator from re-agitating the question of the liability of the respondent as a contributory of the Company.

Held, that the term "Contributory" as defined by section 158 of the Companies Act, 1913, includes any person alleged to be a contributory, and is not confined to a person whose liability as a contributory has been established.

Held also, that section 269 of the Act is not applicable to a suit brought by the Company and such a suit can proceed in spite of an order for winding up made after its commencement.