

APPELLATE CIVIL.

Before Mr. Justice Scott-Smith and Mr. Justice Abdul Raof.

Mst. RAM PIARI, ETC. (DEFENDANTS)—Appellants,
versus

SULTAN BAKHSH (PLAINTIFF)—Respondent.

Civil Appeal No. 1862 of 1918.

Civil Procedure Code, Act V of 1908, Order XLI, rule 27—power of Appellate Court to direct appellant to amend his grounds of appeal, to appoint a Commissioner and to order production of additional evidence—Interest—in partnership suit.

Held, that an Appellate Court has full discretion to direct an appellant at any stage, to amend his grounds of appeal if they are not sufficiently clear.

Held also, that an Appellate Court is competent to issue a commission for the purpose of examining the accounts and remedying certain mistakes and omissions made by the previous commissioner.

Held further, that an Appellate Court would be perfectly justified in passing an order for the production of additional evidence under Order XLI, rule 27, Civil Procedure Code 1908, if it found itself unable to decide the appeal on the record as it stood at the time.

Held also, that interest is not usually allowed by a Court in partnership suits, except on sums advanced in excess of the capital agreed to be contributed.

Singhal's Law of Partnership, page 239, referred to.

Second appeal from the decree of M. H. Harrison, Esquire, District Judge, Sialkot, dated the 26th April 1918, reversing that of Mirza Zaffar Ullah Khan, Subordinate Judge, 1st Class, Sialkot, dated the 22nd December 1914, and granting a decree.

TEK CHAND and MEHR CHAND, MAHAJAN, for Appellants.

MANOHAR LAL, for Respondents.

The judgment of the Court was delivered by—

SCOTT-SMITH J.—The plaintiff Sultan Bakhsh brought the suit out of which the present appeal arises so long ago as the 5th December 1906, for rendition of

1922

April 11.

accounts of partnership and for recovery of any sum which might be found due to him. The proceedings were extremely lengthy and the history of them is clearly given in the judgment of the learned District Judge, who found that Rs. 1,412-10-0 was due from the defendants and passed a decree for that sum, together with costs in proportion. He also ordered that the sum decreed should bear interest at 6 per cent. per annum from the date of institution of the suit till the date of realisation. From this decree the defendants have filed the present second appeal. There is also a cross-appeal by the plaintiff (No. 2266 of 1918), but as Mr. Manohar Lal expressly said he would not press it, we need not say anything further about it, except that it is dismissed with costs.

1922

Ms. RAM PIARI
v.
SULTAN BAKSH.

The first point urged by Mr. Tek Chand on behalf of defendants appellants was that the order of Mr. Rose, District Judge of the 20th August 1915 (pages 16-17 of the paper-book) was contrary to law. In that order Mr. Rose discussed some of the grounds of appeal and in the end confessed his total incapacity to deal with an appeal cast in that form and returned it for amendment within three months. It is contended before us that the plaintiff should not have been allowed to amend his grounds of appeal. The Civil Procedure Code, however, gives the Court full discretion to allow an amendment of pleadings at any stage, and if the grounds of an appeal are not sufficiently clear, we see no reason why an appellate Court should not direct an appellant to amend them. After the plaintiff had filed his amended grounds of appeal, Mr. Rose by his order of the 4th April 1916 issued a commission to *Lala Devi Dayal* instructing him to report on all the points raised in the applications filed by the parties in the District Judge's Court. Mr. Rose stated that the primary object of the commissioner should be (1) to revise *Lala Karam Chand's* report which undoubtedly contained some mistakes, and (2) to complete it by taking into consideration monies realised (or paid out) on account of the partnership after it had been dissolved, but before it was finally wound up and its accounts closed (page 21 of the printed paper-book). Mr. Tek Chand objects to this order on the ground that it contravenes the provisions

1922

—
Mr. RAM PIARI
v.
SULTAN BAKHSH.

of Order XLI, rule 27 of the Civil Procedure Code. Mr. Rose, however, did not order or allow the production of any additional evidence, but merely directed another commissioner to examine the accounts and to remedy certain mistakes and omissions made by the previous commissioner. We cannot see anything illegal in his order. Moreover, we understand that Mr. Rose found himself unable to decide the appeals on the record as it stood at the time, and under these circumstances he would have been perfectly justified in passing an order for the production of additional evidence under rule 27 of Order XLI, had he thought it right to do so.

[Their Lordships then disposed of certain objections to specific items—*Ed.*]

The next point urged was that the defendants should not be made to pay interest on the sum decreed from the date of the suit to the date of realisation. In our opinion, no sufficient reasons have been given for allowing this interest. In the first place, none was claimed in the plaint. Secondly, interest is not usually allowed in partnership suits, except on sums advanced in excess of the capital agreed to be contributed (see in this connection the law of partnership by Singhal, page 239). Thirdly, the delay in the decision of the suit has been due more to the plaintiff than to the defendants. Plaintiff alleged that the defendants' accounts were forged and this necessitated further examination thereof, and it was eventually held that the accounts were not forged. Again, there was a delay when the appeal of the plaintiff came before Mr. Rose owing to the grounds of appeal not being sufficiently clear. Fourthly, the defendants never refused to render accounts and placed all their *bahis* at the disposal of the Court at the very outset. Fifthly, they were not the original partners with Sultan Bakhsh, but undertook liability as the representatives of Lehna Singh with whom the plaintiff entered into partnership. The decree was passed on the 26th April 1918 and a few months later the amount decreed was paid into Court and was invested in war bonds upon which interest has been accruing. The plaintiff will be entitled to so much of the interest upon those bonds as is found to be in proportion to the sum held by us to be due to him. In addition to this we

think that he should be allowed interest at 6 *per cent. per annum* from the date of the decree to the date on which the amount decreed was paid into the executing Court.

1922

—
Mst. RAM PIABI
v.
SULTAN BAKSH.

The only remaining matter which Mr. Tek Chand argued was that of costs. He urged that the parties should have been directed to bear their own costs. Now, the ordinary rule is that costs shall follow the event, and it was within the discretion of the learned District Judge to pass any orders he thought fit in regard to the costs. We do not think that any sufficient reason has been made out for departing from the usual rule or for interfering with the discretion which the learned District Judge has exercised.

The result then is that we accept the appeal and deducting the sum of Rs. 238-15-0 from the amount decreed, we make the decree one for Rs. 1,173-11-0, with proportionate costs in all Courts, and we further direct that the defendants shall pay interest on this sum at 6 *per cent. per annum* from the date of the District Judge's decree until the date on which they paid the amount decreed into the executing Court. The plaintiff's appeal, as already stated, is dismissed with costs.

M. R.

Defendant's appeal accepted in part.

Plaintiff's appeal dismissed.
