

## Jagdish Prasad And Ors. vs Mahadeo on 15 July, 1953

**Equivalent citations: AIR1953ALL758**

ORDER

Brij Mohan Lall, J.

1. This is an application in revision by the defendants under Section 25, Small Cause Courts Act.
2. An ex parte decree was passed against the applicants on 24-10-52, On 7-11-52 they presented an application under Order 9, Rule 13, C. P. C. for setting aside the said decree. On the same day, they presented an application seeking the court's permission to file security of an immovable property. Permission was given to them to file a security bond hypothecating immovable property. On 21-11-52 they presented an unregistered security bond. They asked for one month's extension so that they might get the bond registered. The bond was returned to them on 24-11-52 and they presented the bond, duly registered, on 8-12-52.
3. When the application for setting aside the 'ex parte' decree came up for hearing before the learned Judge the decree-holder raised a contention that the requirements of Section 17 of the Provincial Small Cause Courts Act had not been complied with. This section requires that before presenting an application for setting aside an 'ex parte' decree the applicant should seek the direction of the court as to the nature of security he has to furnish and the security prescribed by the Court should accompany the application for setting aside the ex parte decree. There was no compliance with this provision of law. Putting strict interpretation on the language of this section the application for setting aside the ex parte decree could be rejected on the ground that it was accompanied neither by cash deposit nor by the security bond.

But I am alive to the fact that in certain reported cases a lenient view has been taken and it has been held that if security is furnished within 30 days from the date of the ex parte decree, the aforesaid defect may be condoned. This view is based on a fiction, viz., that the application for setting aside the ex parte decree should be deemed to be presented on the day on which the security of the nature prescribed by the court is actually furnished, if the security is furnished within 30 days of the ex parte decree the application, though in fact presented earlier, may also be deemed to have been presented on that day and both may be within time.

But unfortunately in this case the security bond was presented, duly executed on 8-12-52. By that date the period of 30 days had expired. The unregistered bond as filed on 21-11-52 was a worthless paper. If the application is treated as having been presented on 8-12-52 it was beyond time. It is admitted to have been presented on the day on which it was actually filed or any subsequent day within 30 days of the decree it remained unaccompanied by the security bond. In the former case there would be the bar of limitation and in the latter case the provisions of Section 17, Small Cause

Courts Act, would remain uncomplied with. In either case the application must be rejected. The Court had no power to either extend the time of presenting the application or of filing the security bond.

4. The learned counsel for the applicants has referred to Section 47, Registration Act, which says that when a document is registered the registration takes effect from the date of execution. In accordance with this principle the registration may date back to 21-11-52. But the question still remains whether the applicants did, at any stage, present before the court a duly executed bond within the period of limitation. Surely they did not do so. In the circumstances they did not comply with the requirements of Section 17, Small Cause Courts Act. The learned Judge was perfectly right in rejecting this application on the ground that the requirements of the proviso to Section 17(1), Provincial Small Cause Courts Act, had not been complied with.

5. I see no force in this revision. It is hereby rejected.