

Sakhawat Husain vs Rajjab And Anr. on 8 August, 1950

Equivalent citations: AIR1951ALL424, AIR 1951 ALLAHABAD 424

JUDGMENT

Agarwala, J.

1. This is a defendant's application in revision against an order of the Judge, Small Cause Court, Agra, rejecting his application for setting aside an ex parte decree.

2. The plaintiff opposite party sued the applicant for recovery of Rs. 149 as costs of a shed and Rs. 122 as damages, that is, for recovery of Rs. 271 in all. The Court decreed the suit ex parte on 30-10-1946. When the decree was prepared, it only showed the amount decreed as Rs. 149 and a sum of Rs. 34-13-6 as costs. The decree-writer forgot to mention the sum of Rs. 122 which was claimed as damages and which was also decreed. On 13-1-1947, the defendant applicant made two applications to the Court, below. In the first application he prayed that as he intended to file an application for setting aside the ex parte decree passed against him on 30-10-1946, and as he had no cash he may be permitted to furnish a personal security bond of himself (shakshi zamanat khud). The second application made by him was for setting aside the ex parte decree. Along with those applications, he also filed a security bond which purported to bind himself personally to pay a sum of 200 and also hypothecating certain immovable properties, but the bond was not registered. On the same date the Court ordered on the application for furnishing a personal security bond, "permitted." The security bond was then verified before the Court and apparently it was accepted by the Court as sufficient and the application for setting aside the ex parte decree was registered and notice was directed to be issued to the opposite party.

3. The application came up for hearing on 8-2-1947. It would be noticed that this date was within 30 days of the date of the knowledge alleged by the applicant. The plaintiff opposite party got the case adjourned without disclosing his defense. The case ultimately came up for hearing on 29-3-1947 and on this date the plaintiff opposite party pleaded that the security bond filed on 13-1-1947 was not a security bond at all because it was not registered and further that, in any case, it was not for the whole of the amount decreed by the judgment and, therefore, was insufficient. One more objection was raised, namely, that application for permission to file a security bond in lieu of cash was not made prior to the application for setting aside the ex parte decree and that, in this view, also the application was not maintainable by reason of the provisions of Section 17, Provincial Small Cause Courts Act. The learned Judge held against the plaintiff opposite party on the last plea, namely, that the application for seeking the direction of the Court to enable the plaintiff to furnish a, personal security bond was not made prior to the application for setting aside the ex parte decree. This question has not been agitated before us in this revision. The Court, however, held that since the bond purported to hypothecate certain immovable property and was not registered, it was no security bond at all, and since no security was furnished at the time of making the application for

setting aside the ex parte decree, there was no proper application before the Court. In this view of the matter, it dismissed the application of the defendant applicant. The defendant applicant has now come up in revision to this Court against this order.

4. Under the proviso to Section 17, Small Cause Courts Act, the applicant has either to furnish cash security at the time of making an application for setting aside the ex parte decree or he may furnish such security as the Court may, on a previous application, have directed. In the present case, the Court was asked to permit the filing of the personal security bond. The Court did permit the applicant to file such a bond. The bond filed did contain a clause making the applicant personally liable to pay the amount of the bond. It was, therefore, a valid personal bond. All the requirements of the proviso to Section 17 were thus fully complied with. The mere fact that the bond contained a hypothecation clause does not detract from the bond being a personal bond. It could be sued upon as a personal bond. If the Court had required a hypothecation bond to be furnished and if the applicant had not registered the bond that was actually filed in Court, that would have been quite a different matter.

5. The lower Court relied upon two cases of *Badlu Singh v. Panthu Singh*, A. I. R. (10) 1923 ALL 270: (71 I. C. 474) and *Ram Khelawan v. Dunialal*, A. I. R. (21) 1934 Pat. 74: (147 I. C. 764). In none of these cases did the Court direct that a personal security bond be furnished. This factor distinguishes these two cases from the present case. It may, however, be observed that in *Badlu Singh's* case, (A. I. R. (10) 1923 ALL 270: 71 I. C. 474) the hypothecation bond which was directed to be furnished by the Court, was actually registered within the period of limitation, that is, within 30 days, and if that was so the requirements of Section 17 were in our opinion complied with, as the application for setting aside the ex parte decree would be deemed to have become completed on the date on which the security bond, in accordance with the direction of the Court, was actually filed. This is the view that we have expressed in *Mt. Bipti v. Kali Din*, C. R. 558 of 1949 : (A. I. R. (38) 1951 ALL. 420). However that may be, in the present case, according to the direction of the Court, no hypothecation bond having been required to be filed, the bond that was actually filed was quite sufficient to fulfil the terms of the permission granted by the Court.

6. The fact that the bond was merely for Rs. 200 and not for the whole of the amount, which was decreed by the judgment, cannot also prejudice the applicant because the decree that was prepared by the Court showed merely a sum of Rs. 183/13/6 as the decretal amount. Under the proviso to Section 17, the applicant was required to furnish a security bond "for the performance of the decree" or "compliance with the judgment." As the decree showed an amount of Rs. 183/13/6 only, the applicant's security : bond could not be said to be not "for the performance of the decree" (see *Basdeo v. Mool Chand*, 43 ALL 438 : (A. I. R. (8) 1921 ALL 144). *Azmatullah Khan v. Ahmad Ali*, 47 ALL 728 : (A. I. R. (12) 1925 ALL 379).

7. No doubt, when the plaintiff appeared, he could take objection to the insufficiency of the bond and the Court could then correct the error and order the defendant-applicant to furnish a bond sufficient to cover the true decretal amount. If the plaintiff objected to a personal security bond of the defendant himself on the ground that it gave him nothing more than the liability created under the decree itself, then the Court could order the defendant to file a registered hypothecation bond of

sufficient amount in order to safeguard the interest of the plaintiff, before it set aside the ex parte decree. We may observe that in cases in which a personal liability to pay a certain amount has been created by a decree, the Courts should not ordinarily accept a personal bond of the debtor himself because such a bond gives no security worth the name to the decree-holder. The bond merely creates a personal liability which has already been created by the decree itself.

8. We, therefore, allow this application, set aside the order of the Court below and remand the case to that Court for the trial of the application for setting aside the ex parte decree on its merits.

9. The parties shall bear their own costs of this revision.