

(1922) 11 AHC CK 0014
In the Allahabad High Court

Chakkhan Lal

APPELLANT

Vs

Kanhaiya Lal

RESPONDENT

Date of Decision : 15-11-1922

Acts Referred:

Court Fees Act, 1870 — Article 1(I)

Citation : AIR 1923 All 118 : 69 Ind. Cas. 921

Hon'ble Judges : Walsh, J;Piggott, J

Bench : Division Bench

Judgement

1. This is an application in revision of a somewhat peculiar nature. We do not wish to go into unessential facts, but the following facts require to be noted. On the 4th of January 1921 a plaint was filed ostensibly on a simple mortgage. The claim was for a large sum in excess of Rs. 20,000. On the 13th of July 1921 one of the defendants filed a written statement, a lengthy document, raising a large number of pleas. It was, however, an important part of the defendant's case that, by reason of certain facts stated by him, the plaintiff had become liable to him in damages for a sum which actually exceeded the amount of the claim. In the written statement the amount of this excess was put at Rs. 415, and, undoubtedly, the defendant Chakkhan Lal asked for a decree in his favour for this amount. He offered further to pay additional Court-fees if it should be found that a larger sum was due to him; but he contended all along that he was only liable to pay an ad valorem. Court-fee on such sum as might be found due to him in excess of the sum due to the plaintiff on the mortgage transaction which was the basis of the suit. The Trial Court fixed a number of issues on the 22nd of July 1921 and the 3rd of these issues raised the point whether the defendant, Chakkhan Lal, was not bound to pay an ad Court fee on the entire sum claimed by him as damages, before this portion of his defence could be entered into. For reasons which we need not consider, the case was set down for hearing on the 25th of January 1922 and following days. After arguments had been heard on the 25th of January 1922 the Trial Court pronounced judgment on the first three issues in the case, and, on the 3rd issue found against the defendant, Chakkhan

Lal. It held that he was not entitled to have his claim for damages enquired into and determined in this trial, unless he first paid an ad valorem Court-fee on the entire amount claimed as damages in his written statement. On this the said defendant asked the Court to adjourn the hearing of the suit and to give him a month in which to pay the additional Court-fee required. The Court refused to adjourn and, no doubt, by the terms of its order, implied that it would not now receive the Court-fee in question if it should be tendered at any future date. We must note, however, that this question has not been brought to a direct issue, because the defendant made no attempt to tender the amount of the Court-fee in question but came up to this Court in revision against the Court's order of the 26th of January, 1922. Now, in its actual effect, that order is no more than an order refusing to adjourn the hearing of a pending suit. No doubt the opinion is implied that Chakkhan Lal, defendant, will not be allowed, on any future date, to make up the deficiency in the Court-fee on his written statement; but, as we have remarked above, that particular point was not brought to a direct issue by the tendering of the Court fee required. We found it necessary to hear arguments in the course of which the merits of the dispute were laid before us, because it was impossible for us to determine the question whether the application really fell within the purview of the revisional jurisdiction of this Court until we had been put completely in possession of the facts. We feel bound to hold, however, that the order complained of is not one against which an application in revision lies. We are bound to follow the principles laid down by the Full Bench in the case of *Buddhoo Lal v. Mewa Ram* 63 Ind. Cas. 15 : 19 A.L.J. 568 : 43 A. 564 (F.B.) and, certainly, the record now before us is not the record of a case which has been decided. We propose to dismiss the application on this ground alone; but having heard so much in the way of argument, we think it is just as well that we should add the following three remarks. We pronounce no opinion one way or the other on the propriety of the Trial Court's refusal to adjourn the hearing of the suit on the 28th of January 1922. Secondly, We are of opinion that the order requiring the defendant to pay an ad valorem Court fee on the full amount of the damages claimed in his written statement was a good order, regard being had to the first Article of the First Schedule to the Court Fees Act, It must be borne in mind that this Article was amended at the time of the enactment of the present Civil Procedure Code, Act V of 1908, and that rulings prior to the date of the said amendment must; be very cautiously used. Finally, we think it only fair to the defendant Chakkhan Lal and to the parties to say that, if, at any time when this suit is actually pending in the Court below and that Court is still seized of the entire case, the defendant Chakkhan Lal comes into Court and tenders for the acceptance of the Court the amount of the Court fees necessary in order that his written statement may be properly stamped according to law, it seems to us a matter for very serious consideration by the Trial Court whether that Court would have jurisdiction to refuse to accept those Court-fees. With these remarks we dismiss the application with costs.