
(1926) 01 BOM CK 0016
In the Bombay High Court
Case No : Second Appeal No. 594 of 1925

Maneklal Vadilal

APPELLANT

Vs

Chandulal Balabhai Shah

RESPONDENT

Date of Decision : 08-01-1926

Acts Referred:

Court Fees Act, 1870 — Section 12

Citation : (1926) 28 BOMLR 525 : 94 Ind. Cas. 646

Hon'ble Judges : Norman Macleod, J;Coyajee, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Norman Macleod Kt., C.J.—The plaintiff sued on a writing to recover Rs. 1,000 with interest at nine per cent. from September 24,1920. The defendant claimed that, after he executed that writing, there were share dealings between himself and the plaintiff, with the result that the plaintiff became indebted to the defendant to the extent of Rs. 971-14-0. The Judge allowed the defendant to set off his claim, holding that the plaintiff's claim for interest during the period of two years was improper, and found that nothing was due to the plaintiff, and dismissed the suit.

2. In appeal the District Judge dealt with the contention of the plaintiff that the set-off was wrongly allowed, as no court-fees were paid, by pointing out that the provisions of the Court Fees Act were not to be made the means of harassing an opponent. He refers to some decision of the Privy Council without giving the exact reference. It is quite true that the objection as to court-fees should have been taken in the lower Court. But it was open to the District Judge, u/s 12 of the Court Fees Act, to direct the defendant to pay the court fees on his written statement before the set-off could be allowed. As a matter of fact in a case of this nature, when once a document is admitted by the lower Court, it is not for the plaintiff to say that the document should be struck off from the record, the Court is entitled to allow the defendant, on payment of the proper fee, to rely

upon the set-off.

3. We dismiss the appeal with costs therefore, but direct that the respondent should pay the proper court fee on his written statement within a week after the record reaches the lower Court.