

(1938) 05 AHC CK 0007
In the Allahabad High Court

Shiromani Sugar Mills Ltd.

APPELLANT

Vs

Seth Sugni Chand Hashmat Rai and Co.

RESPONDENT

Date of Decision : 19-05-1938

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 111
Court Fees Act, 1870 — Section 6

Citation : AIR 1938 All 522

Hon'ble Judges : Bennet, J

Bench : Division Bench

Judgement

Bennet, J.—This is a civil revision which has been listed during vacation because there is an accompanying application to stay the proceedings in a civil suit in the Court below. The suit is brought by Seth Sugni Chand Hashmat Rai & Co. against the Shiromani Sugar Mills Ltd. for recovery of Rs. 99,511-10-9 on the allegation that the defendants contracted with the plaintiffs that the plaintiffs should make a building in Basti for the defendants and that the plaintiffs made the building and the plaintiffs now sue for the price. One of the pleas in defence was that the contractors had dug out earth from the land of the defendants and had occupied the land of the defendants by storing bricks and by this injury to the land of the defendants, the defendants were entitled to recover Rs. 30,000 as set-off. The Court directed that a court-fee should be paid on this setoff. The defendants refused to pay and the Court refused to entertain the pleading. Against that order the civil revision has been filed. Now learned Counsel argued that this pleading was an equitable set-off. He referred to Ram Das Vs. Dwarka Das, in which there was a creditor who transferred his right to collect debts by a sale deed and after the sale deed proceeded to realize one of the debts. It was held to be equitable that the vendee should be allowed credit for the amount so realized out of the consideration. The circumstances are not clearly set out in the ruling, but the case arose out of a partnership and the rights of the plaintiff arising from his deceased father who had been a partner after the partnership had dissolved. Another ruling on which learned Counsel relied was Basheshar

Nath Khanna & Sons v. Grindlay & Co. Ltd., Lahore AIR (1937) Lah. 73. That was a suit of Grindlay & Co. for recovery of a sum of money from the defendants by sale of property alleged to be mortgaged with the plaintiff by deposit of title deeds. On page 75, col. 1, it is stated:

Moreover, defendant 1 was apparently claiming damages only by way of an equitable set-off, arising out of the very contract on which the plaintiffs based their claim.

2. No ground is shown as to why it was considered that such a set-off would be an equitable set-off. Now in the present case learned Counsel has failed to show why the claim of set-off is not the kind of set-off dealt with in the Civil P.C., Schedule 4 which amends Article 1 of Schedule 1, Court-fees Act. That amendment states that in Article 1 of Schedule 1 after the word "plaint" the words "written statement pleading a set-off or counter-claim" shall be added. Schedule 1, Court-fees Act therefore prescribes an ad valorem court-fee for any written statement pleading a set-off or counter-claim. No exception is provided in the amending provision in Schedule 4, Civil P.C. of 1908 for any equitable set-off. It is true that in the Allahabad ruling it was mentioned on page 876, col. 2:

It has been held in this Court in several cases that an equitable set-off can be claimed even independently of the specific provisions of the CPC Section 111 now corresponding to Order 8, Rule 6, Nand Ram v. Ram Prasad (1905) 27 All. 145 and the earlier cases referred to therein. It is not necessary to demand court-fees on this account.

3. Now no reference is made in this passage to the amendment in the Court-fees Act, Schedule 1 introduced by Schedule 4, Civil P. Order of 1908. Consequently the reference to earlier rulings would not have any bearing on the amended law as it now stands. In any case, the Allahabad ruling purported to deal with an equitable set-off. There is nothing in the present case which suggests that the claim for set-off is any other than an ordinary claim to set-off. If the defendants brought a suit against the plaintiffs claiming Rs. 30,000 on account of the damage to the property of the defendants, the claim would be merely one in law and there would be no need whatever to refer to any provision of equity. In no sense can the present set-off be said to be a claim in equity. u/s 6, Court-fees Act it is imperative that the Court should demand the court-fee specified in Schedule 1 and that is what the Court below has done. I consider therefore that the order of the Court under revision is correct and I dismiss this application in revision.