

Vishwa Nath Singh Vs. Gopal Krishna Singhal

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Court : Allahabad

Decided On : May-06-1985

Reported in : AIR1987All13

Judge : K.N. Misra, J.

Acts : [Code of Civil Procedure \(CPC\) , 1908](#) - Order 9, Rule 13; [Provincial Small Cause Courts Act, 1887](#) - Sections 17

Appeal No. : Civil Revn. No. 54 of 1983

Appellant : Vishwa Nath Singh

Respondent : Gopal Krishna Singhal

Advocate for Def. : J.S. Singhal, Adv.

Advocate for Pet/Ap. : Naresh Chandra Mehrotra, Adv.

Disposition : Revision allowed

Judgement :

ORDER

K.N. Misra, J.

1. A suit for ejectment, arrears of rent and damages was filed by the landlord plaintiff-opposite party Gopal Krishna Singhal against the tenant Vishwanath Singh in respect of house No. C-1014, MIG. Ram Sagar Misfa Nagar (Now Indra Nagar), Lucknow with the allegation that the defendant is tenant in the said premises since 15-2-1982 at a monthly rent of Rs. 450A besides Rs. 20/- as water charges. The defendant fell in arrear of rent whereupon a notice dated 14-6-1982 was issued by the plaintiff through his counsel demanding arrears of rent etc. and terminating tenancy. This notice was allegedly served on 16-6-1982, but the defendant neither paid the arrears nor vacated the premises in question. The plaintiff thereupon filed a suit claiming a sum of Rs. 1440.32 as arrears of rent since 15-4-1982 to 16-6-1982 including water charges on the aforesaid rate and a sum of Rs. 1504.00 was claimed as damages for use and occupation since 17-7-1982 to 22-10-1982, the date of filing the suit. The plaintiff also claimed that a decree for pendente lite and future damages till the actual delivery of physical possession be passed in his favour against the defendant and it was mentioned that the additional court-fee will be paid at the time of execution of decree. A prayer for awarding costs of the suit against the defendant was also made. This suit was filed in the court of District Judge, Lucknow and was registered as SCC

Suit No. 46 of 1982, The learned District Judge, Lucknow directed issue of summons to the defendant fixing 14-12-1982 for final disposal, but transferred the case to the Court of VI Additional District Judge, Lucknow for disposal. The learned Additional District Judge on 14-12-1982, however, directed summons to be issued to the defendant fixing 27-1-1983 for filing written statement and 3-2-1983 for framing of issues. It would be relevant to mention that 27-1-1983 was not a working day being declared a holiday, and, as such, there was no question of defendant's putting appearance on said date. The defendant, however, could no't attend court on 3-2-1983 as according to him he had fallen ill and was unable to attend court on that date. As none attended court on behalf of the defendant on 3-2-1983, the learned Additional District Judge, Lucknow directed the case to proceed ex parte against the defendant and fixed 4-2-1983 for recording ex parte evidence and on that date the suit of the plaintiff was decreed ex parte. The operative portion of the judgment and order reads as under : --

'The suit for the plaintiff for ejectment, recovery of Rs. 1449.32 as arrears of rent and Water charges and Rs. 1504.00 being damages along with damages pendente lite and future at the rate of Rs. '450/- plus Rs. 20/- water charges P.M. in respect of house in suit is decreed against the defendant ex parte with ex parte costs. Court-fee on the damages pendente lite and future shall be paid on the execution side.

Sd/- V. N. Pandey,

VI Addl. District Judge,

Lucknow.'

2. A decree was prepared on 16-2-1983 and it appears that without putting it on the notice board, the decree was signed by the learned Additional District Judge on that very date, i.e., 16-2-1983. Costs of the suit as assessed in the decree amounted to Rs. 1239.45. A perusal of the decree indicates that the suit of the plaintiff for ejectment, recovery of Rs. 1440.32 as arrears of rent and water charges and Rs. 1504.00 being damages along with pendente lite and future damages at the rate of Rs. 450/- plus Rs. 20/- water charges per month in respect of house in question was decreed against the defendant ex parte with ex parte costs. Court-fee on the damages, pendente lite and future, was ordered to be paid on the execution side.

3. An application was moved by the defendant Judgment-debtor on 2-3-1983 under Order 9, Rule 13, C.P.C. which was registered as Misc. Case No. 5 of 1983. It was averred in the application that the defendant had come to attend the court on 27-1-1983, but on that date the Court was closed and on return he suffered from high temperature, cold and cough and so he was confined to bed and recovered from ailment on 20-2-1983. As he had grown weak, he could not come to court on (sic) and on inquiry he came to know that the case has been decreed ex parte against him on 4-2-1983. It was, thus, prayed that the ex parte decree be set aside and the case be restored and decided on merits. Affidavit in support of this application was also filed by the defendant-applicant. Along with this application, a security bond paper No. Ka-7 was also filed, but the prayer for furnishing security instead of depositing decretal amount in cash was refused by the learned Additional District Judge vide order dated 3-3-1983 and he directed the defendant-applicant to deposit the entire decretal amount in seven days and only then admission or registration of the application under Order 9, Rule 13, C.P.C. will be considered and the said application was directed to be

put up for further orders on 10-3-1983. The defendant moved another application on 4-3-1983 under Section 17 of the Provincial Small Cause Courts Act indicating that the property mentioned in the security bond is free from all incumbrances, loan and any other liability and prayed that the court be pleased to accept security in compliance of Section 17 of the Provincial Small Cause Courts Act. This application was ordered to be put on 7-3-1983 but on that date it was ordered to be put up for orders on 18-3-1983. In the meantime the defendant had also filed a tender of Rs. 3000/- for depositing cash security towards the decretal amount. The learned Additional District Judge was pleased to pass order on 8-3-1983 directing the Office to report by 9-3-1983 as to whether the entire decretal amount would be covered by the aforesaid tender of Rs. 3000/- submitted by the defendant-applicant. As per office report dated 9-3-1983, the decretal amount was Rs. 4183.77 Paise, and, as such, besides amount of Rs. 3000/- a further sum of Rs. 1183.77 by which cash security sought to be deposited fell short, was more to be deposited to cover the decretal amount. Considering this report, the learned Additional District Judge vide order dated 9-3-1983 directed the defendant to make good aforesaid deficiency in depositing the decretal amount. The defendant-applicant thereupon submitted a tender of Rs. 4184.00 for depositing cash security in respect of the decretal amount of Rs. 4183.77 as per office report dated 9-3-1983. The said tender was passed vide order dated 15-3-1983 by the learned Additional District Judge. The defendant-applicant deposited the said amount on 16-3-1983 in the State Bank of India and submitted the receipt before the Court on 18-3-1983 and on that date the learned Additional District Judge directed the restoration application to be registered, which was registered as Misc. Case No. 5 of 1983. And thus, accepting the aforesaid cash security furnished by the defendant-applicant, the learned Additional District Judge was pleased to direct notice to be issued to the plaintiff-decree-holder fixing 12-4-1983 for filing objection. The execution of the decree was also ordered to be stayed. The plaintiff-decree-holder on receipt of notice filed objection to the restoration application on 12-4-1983, inter alia, pleading that the application for restoration and setting aside ex parte decree is not maintainable in law as the provisions of Section 17 of the [Provincial Small Cause Courts Act, 1887](#) have been violated. It was also pleaded in para 2 of the objection that the restoration application is not maintainable in law as the defendant has not deposited full decretal amount and wilfully violated the order of the court dated 10-3-1983. The learned Additional District Judge vide order dated 12-4-1983 dismissed the aforesaid application of the defendant-judgement-debtor which was moved by him for setting aside the said ex parte decree under Order 9, Rule 13, C.P.C. by holding it to be not maintainable on account of non-compliance of the provisions of Section 17 of the Provincial Small Cause Courts Act. He accepted the contention of the plaintiff-decree-holder that the amount deposited by the defendant is less than the decretal amount inasmuch as the defendant has not deposited the amount decreed as damages, pendente lite and future, at the rate of Rs. 450/- per month plus Rs. 20/- as water charges up to the date of moving the application. The learned Additional District Judge also refused the prayer of the defendant-applicant for giving 'security in respect of the alleged amount in balance as according to him this prayer could not be accepted for the reason that, 'firstly, the entire amount ought to have been deposited along with the application or within time extended by the court and not on any subsequent point of time and secondly, because there would be no justification for permitting to furnish security because if a person claiming himself to be tenant wants to remain in occupation he must pay the amount whatever is due which is substantially either rent or damages and he cannot be permitted to contest the proceedings or to remain in occupation if he is incapable of making payment.' Aggrieved by this order the defendant-judgment-debtor preferred

this revision and in pursuance of order passed by this Court on the interim relief application, the defendant-applicant has deposited in the trial Court all the amount due up to date by way of damages for use and occupation at the rate of Rs. 450/- together with Rs. 20/- as water charges per month and the execution of the decree has been stayed on the condition that the defendant shall continue to deposit a sum of Rs. 450/- together with Rs. 207/- as water charges every month. The plaintiff-decree-holder had moved execution application on 22-7-1983 and the additional Court-fees was paid on the pendente lite and future damages amounting to Rs. 525.50 on 22-7-1983. The defendant has deposited the amount of damages, pendente lite and future in the trial Court as per order of this Court. The plaintiff has also withdrawn the total amount so deposited amounting to Rs. 8649.00 vide refund voucher dated 22-2-1984. It is not disputed that the defendant is continuously depositing a sum of Rs. 470/- per month. In the present revision the order dated 12-4-1983 has been challenged by the defendant judgment-debtor.

4. I have heard learned counsel for the parties and have perused very carefully the impugned order and the record of the case.

5. Learned counsel for the defendant-applicant urged that the learned trial Court erred in rejecting the application filed by the defendant under Order 9, Rule 13, C.P.C. for setting aside ex parte decree as not maintainable. Learned counsel urged that having accepted cash security deposited by the defendant and having issued notice of the application to the plaintiff-decree-holder, the learned Additional District Judge acted illegally and with material irregularity in exercise of jurisdiction in dismissing the application being , not maintainable on the ground that the further amount of damages, pendente lite and future till the date of application for setting aside ex parte decree was not deposited, and, as such, the application was not maintainable for non-compliance of Section 17 of the Provincial Small Cause Courts Act. Learned Counsel further contended that since no court-fee was paid by the plaintiff-decree-holder on the pendente lite and future damages, and, as such, the Same could not be treated to be decretal amount and, as such, if that amount was not deposited, his application moved under Order 9 Rule 13, C.P.C. could not be rejected being not maintainable for non-compliance of the provisions of Section 17 of the Small Cause Courts Act. Learned Counsel further contended that having accepted cash security, which was deposited by the defendant as per office report and having issued notice of the application to the defendant, the learned Additional District Judge erred in rejecting the application as not maintainable for non-compliance of the provisions of Section 17 of the said Act. In other words his contention was that since the defendant has deposited the decretal amount as per office report and direction given by the Court, which is contained in its order dated 9-3-1983 and, as such, the application could not be rejected for non-compliance of the provisions contained in Section 17 of the said Act. At any rate, the learned Court below ought to have permitted the defendant to make good deficiency, if any, in making deposit of the decretal amount. Learned counsel urged that since the defendant had acted in good faith and he had bona fide deposited the amount which was directed to be deposited by Court's order dated 9-3-1983 in pursuance of the office report of that date, and, as such if any further amount was required to be deposited in respect of pendente lite and future damage, for which no court-fee was paid by that date, the learned Additional District Judge ought to have given opportunity to the defendant for making good the deficiency, if any, in depositing the decretal amount. His further contention was that since no one should be made to suffer by the order of court, and, as such, when in the present case the defendant had deposited the amount which he was

directed to deposit in accordance with the office report regarding the quantum of the decretal amount to be deposited by the defendant, and, as such, the defendant's application could not be rejected being not maintainable for non-compliance of the provisions contained under Section 17 of the said Act especially when the security deposited under said section was accepted to be sufficient and notice was directed to be issued to the plaintiff-decree-holder of the said application moved under Order 9 Rule 13, C.P.C. for setting aside ex parte decree. Learned Counsel further contended that since sufficient cause has been shown for non-appearance by the defendant-applicant on 3-2-1983, and, as such, the ex parte decree dated 4-2-1983 deserves to be set aside.

6. In reply, learned counsel for the plaintiff decree-holder urged that no application under Order 9, Rule 13. C.P.C. can be entertained without compliance of provisions of Section 17 of the Provincial Small Cause Courts Act. Learned counsel urged that the defendant while moving the application for setting aside ex parte decree should have deposited the entire amount, which according to the learned counsel, would include pendente lite and future damages decreed by the Court. Learned counsel urged that the defendant was bound to deposit the said amount although no Court fees was paid on that amount by the plaintiff-decree holder at the time of preparation of the decree. His contention was that the suit was decreed also in respect of pendente lite and future damages at the rate of Rs. 450/-plus Rs. 20/- as water charges, and, as such, the defendant should have calculated the amount of pendente lite and future damages till the date of application moved under Order 9, Rule 13, C.P.C. and he should have also deposited that amount along with the decreed arrear of rent and costs of the suit etc. Learned counsel further urged that the trial Court had vide order dated 10-3-1983 directed the defendant to deposit full decretal amount and since the defendant has violated that order and deposited only a sum of Rs. 4184.00, which did not cover the pendente lite and future damages till the date of moving of application, and, as such, there was deliberate non-compliance of the Court's order, and, as such, the application for setting aside ex parte decree was not maintainable in view of Section 17 of the Provincial Small Cause Courts Act. Learned Counsel, thus, urged that no error has been committed by the learned Additional District Judge, Lucknow in rejecting the said application being not maintainable.

7. At the very outset it may be mentioned that there is no order on record passed by the Court on 10-3-1983 and this date referred in para 2 of the objection filed by the plaintiff probably refers to order dated 9-3-1983, which reads as under : --

'9-3-1983. REPORT DEKHI. TENDER MAIN DARSHAI GAI RASHI DEGREE KI RAKAM SE.KAM HAL KAMI POORI KIJAI. KAMI POORI KARNE PAR PATRAWALIADESHARTH PRASTUT KI JAI'.

Sd/- Illegible.'

The report of the office on which the aforesaid order was passed by the learned court below dated 9-3-1983 reads as under : --

'Srimanji,

Tajvij ke mutabik 1440.32 Kiraya Aur Pani Ka Kharch Tatha 1504/- Harjana Tatha 1239.45 Degree Ka Kharch Jama Kama Chahiye Jis Ka Kuljog 4138.77 Paise Hota Hai Parantu Tender Keval 3000/- Ka He Keval Dakhil Kiya Gaya Hai, Is Prakar 1183.77

Paise Kam Hai. Adesharth Prastut Hai.

Sd/- Illegible

9-3-1983.'

8. The aforesaid order dated 9-3-1983 clearly indicates that the Court below, as per office report referred to above, had virtually directed the defendant to deposit in cash a sum of Rs. 4183.77 being the decretal amount and the defendant had in compliance of said order deposited a sum of Rs. 4183.77 on 16-3-1983 on a tender which was passed by Court on 15-3-1983. Learned Court below accepting the cash security deposited by the defendant-applicant had vide order dated 18-3-1983 directed the application to be registered and the notices be issued to the plaintiff-opposite party inviting objection to it. It is, thus, clear that the defendant-applicant had deposited cash security in respect of the decretal amount as was indicated in the office report and accepted by the learned Court below.

9. Learned Counsel for the opposite party, had, however, urged that the court below could not grant time for making deposit of the cash security beyond the period of limitation of thirty days prescribed for filing an application for setting aside ex parte decree under Order 9, Rule 13, C.P.C. His further contention was that although learned court below had granted time for making deposit . of cash security, but in spite of it, the defendant-applicant had not deposited the decretal amount and that too the entire decretal amount, within seven days as directed by Court below by order dated 3-3-1983. Learned counsel urged that the defendant had deposited the aforesaid amount on 16-3-1983 and so the said deposit cannot be deemed to have been made in compliance of the order dated 3-3-1983. He, thus, urged that the application for setting aside ex parte decree has been rightly rejected by the learned lower Court being not maintainable for non-compliance of the provisions contained in proviso to Section 17 of the Act. I am not impressed by this argument of the learned Counsel.

10. As mentioned above the defendant had submitted a tender well within time allowed by the Court for a sum of Rs. 3000/-on 8-3-1983 for depositing cash security in respect of the decretal amount. After considering office report, according to which the entire decretal amount was Rs. 4183.77, the learned court below had directed the defendant to make good the deficiency and deposit the said entire decretal amount. Thereupon a tender of Rs. 4183.77 was submitted and the same was passed by Court on 15-3-1983 and the amount was deposited the very next day. The submission of the said tender by the defendant-applicant was by way of step-in-aid for compliance of Courts order dated 9-3-1983, which was passed by the learned court below after calling the Munsarim's report regarding entire decretal amount to be deposited by the defendant. Learned counsel for the plaintiff-opposite party had urged that the Court below could not grant or extend time for making deposit of the security bond or the cash security beyond the period prescribed for making application for setting aside ex parte decree. I am unable to agree with this contention.

11. Similar question cropped up for consideration before a Division Bench of this Court in *Hukam Khan v. 1st Addl. Dist. Judge, Nainital*, 1983 All LJ 737. In this case ex parte decree was passed on 1st June, 1981. It was sought to be executed on 2nd July, 1981. An application under Order 9, Rule 13, C.P.C. was moved by the defendant on 4th July, 1981 asserting that he acquired knowledge of the decree on 2nd July,

1981. Simultaneously he moved application under Section 17 of the Act for furnishing security. On this application the Court ordered, 'Let Rs. 2000/- be deposited in cash by 14-7-1981. Security in respect of the amount be furnished by the same date.' The applicant failed to comply with the said order. But on his application time was extended up to 1st August, 1981 for complying with the order dated 4-7-1981. The defendant thereupon deposited Rs. 2000/- in cash and furnished security bond for a sum of Rs. 3000/- on 1st August, 1981. Thus, the defendant made compliance of the order dated 4-7-1981 on said date. The court thereupon passed order on 3-8-1981 directing issue of notice to defendant after accepting security bond already furnished. This order was apparently passed after expiry of the period of thirty days computing from the date of knowledge. Notice of the application was issued to the plaintiff-opposite party fixing 27th August, 1981. An objection was raised by the plaintiff-opposite party that the security furnished was short by Rs. 200/-. The defendant thereupon sought permission to furnish security for this amount also which was granted and he furnished security for this amount as well. The plaintiff contested the application asserting that the application is incompetent on account of non-compliance of the proviso to Section 17 of the Provincial Small Cause Courts Act within the period prescribed for filing application for setting aside ex parte decree, and, as such, it was liable to be rejected. The Court overruled the plaintiff's objection and set aside the decree. This argument regarding non-maintainability of the application for setting aside ex parte decree on aforesaid ground was considered by the Division Bench and it was observed that : --

'The trial Court has jurisdiction to extend time for furnishing security and as such the trial Court did not commit any patent error or exceeded its jurisdiction in passing the order dated 6-11-1981.'

In *Ram Bharose v. Ganga Singh* : AIR1931All727 the Full Bench of this Court while considering the provisions of Section 17 of the Provincial Small Cause Courts Act observed as follows : --

'A reasonable and practical interpretation of the section is as follows :

(1) The applicant must within 30 days file his application either with cash or with a statement that he is prepared to give security (and in the latter case he may, of course, tender the security he proposes) and ask for the direction of the Court.

(2) In the case where he wants to give security, if the Court refuses to direct security, he must deposit cash within the 30 days, or his application will be rejected.

(3) If the Court agrees to direct security, then : (a) it will consider the security already offered, if it has been so offered, or (b) name security to its satisfaction which must be filed within the 30 days.

(4) If the applicant does not in fact ask for a direction or if, though the applicant does ask for a direction, the Court does not in fact give any direction, but in fact the Court does issue notice, the Court shall be taken to have approved the deposit of cash or the security offered as the case may be.

(5) If filed within the 30 days and accepted by the Court expressly or impliedly by the issue of notice the application is a good application, though it will be open to the decree-holder to challenge the nature and sufficiency of the security and to the Court

under Order 9, Rule 9 to make such further conditions as it thinks fit.

If the Court delayed in giving its direction, or approving expressly or impliedly the security already tendered, so long that the period of limitation had expired before the applicant had fair opportunity of complying with the direction, then in a suitable case it would be open to the Court itself to consider and exercise its inherent powers reserved to it by Section 151.'

12. In the present case the learned court below had, vide order dated 3-3-1983 directed the defendant to deposit the entire decretal amount in seven days. The defendant had submitted tender on 8-3-1983 for a sum of Rs. 3000/- which fell short by Rs. 1183.77 as was reported by the office. Learned court below after considering this report passed order dated 9-3-1983 directing the defendant to make good the deficiency in depositing the decretal amount. The tender for Rs. 4183.00 was passed by the Court below on 15-3-1983 and the amount was deposited by the defendant on 16-3-1983. This security was accepted and notice of the application for setting aside ex parte decree was issued to the plaintiff-opposite party. In similar circumstances it was held by the Division Bench in Hukam Khan's case (1983 All LJ 737)(supra) that since the trial Court had accepted the security bond as sufficient and issued notice to the petitioner, and, therefore, it must be held that the court had approved the deposit of cash and the security offered by the respondent. Thus, it cannot be urged that the application moved by the defendant-applicant to set aside the ex parte decree was not maintainable for non-compliance of the proviso to Section 17 of the Provincial Small Cause Courts Act. Since the defendant had deposited the aforesaid amount of Rs. 4184.00 in pursuance of the Court's order, which was passed after considering the office report, and, as such, it cannot be urged that the defendant had wilfully defaulted in not depositing the decretal amount in respect of damages, pendente lite and future, till the date of filing of the application. When an objection was raised by the plaintiff-opposite party indicating deficiency in the deposit of the decretal amount in respect of decreed pendente lite and future damages, the defendant had sought permission of the court to give security in respect of the amount in balance, but this prayer was refused by the court below firstly, on the ground that the entire amount ought to have been deposited along with the application or within time extended by the court and not at any subsequent point of time and secondly, there would be no justification for permitting to furnish security because if a person claiming himself to be tenant wants to remain in occupation he must pay the amount whatever is due which is substantially either rent or damages and he cannot be permitted to contest the proceeding or to remain in occupation if he is incapable of making payment. This is altogether erroneous view on the facts and circumstances of the case mentioned above.

13. The defendant had deposited said amount of Rs. 4184.00 as per aforesaid order of the court passed on said office report according to which the decretal amount was Rs. 4183.77. This security was also accepted by the court as sufficient compliance of the requirement of the provision to Section 17 of the Provincial Small Cause Courts Act, and, as such, after issuing notice to the plaintiff-opposite party, no exception can be taken to any defect in the deposit of the cash security amount. It is well settled that no one can be made to suffer on account of the order passed by the Court itself and if any deficiency in making deposit of the cash security covering the entire decretal amount was noticed subsequently, on an objection being raised by the plaintiff-opposite party the same could be made good seeking order of the Court. The learned Court below should have acceded to the request of the defendant for furnishing

further security to make good the deficiency in deposit of entire decretal amount or it should have directed the defendant to deposit further amount in cash to cover the entire decretal amount as was asserted by the plaintiff-opposite party. The learned court below instead of directing the defendant to make good the deficiency in depositing the entire decretal amount, rejected the application for setting aside the ex parte decree treating it to be non-maintainable for non-compliance of the proviso to Section 17 of the Provincial Small Cause Courts Act. It is well settled that our laws and procedures are based on the principle that, 'as far as possible, no proceeding in a Court of law should be allowed to be defeated on mere technicalities and the litigant should not be made to suffer on account of any order passed by the Court itself.' The defendant had filed security bond along with an application for setting aside ex parte decree, but when the permission for filing security bond was refused by the learned court below, the defendant had sought to deposit the decretal amount in cash as was directed by the court and a tender for depositing a sum of Rs. 3000/- was filed by the defendant within time allowed by the Court vide order dated 3-3-1983. The defendant had made good the deficiency in depositing the decretal amount in cash which was pointed out in the office report dated 8-3-1983. This report was accepted by the learned court below and vide order dated 9-3-1983 the defendant was directed to make good the deficiency as pointed out in the office report and to deposit the said entire decretal amount as was reported by the Munsarim in its aforesaid report. Thus, having made compliance of the order regarding deposit of said decretal amount in cash as ordered by the Court, and the Court having accepted the security and having ordered issue of notice to the plaintiff-opposite party, no exception can be taken to the deposit of the cash security covering the said decretal amount as was reported by the Munsarim of the Court, which was accepted by the Court itself as is evident by order dated 9-3-1983.

14. In these circumstances the defendant can be said to have been misled by the action of the court itself in not making deposit of the entire decretal amount also covering pendente lite and future damages, in respect of which court-fees was not paid and the amount was not calculated in the decree itself. In such circumstances the defendant was entitled to be relieved of the hardship and he cannot be made to suffer by taking a view that the compliance of the provisions of Section 17 of the Provincial Small Cause Courts Act has not been made by the defendant by depositing the entire decretal amount within the time allowed by the Court. Since the defendant applicant had deposited the entire decretal amount as was pointed out in the office report, and, as such, it cannot be said that he wilfully defaulted in not making deposit of the entire decretal amount. The learned court below ought to have granted further time to the defendant for furnishing security or making deposit in cash covering the pendente lite and future damages. The Court had jurisdiction to pass such order granting time to make good deficiency in depositing the entire decretal amount, if any.

15. The defendant as per orders of this Court has deposited the entire amount covering pendente lite and future damages and also for subsequent period till date. In these circumstances the impugned order passed by the Court below rejecting the application of the defendant-applicant as not maintainable for non-compliance of the provisions of Section 17 of the Provincial Small Cause Courts Act cannot be sustained and deserves to be set aside. I have also gone through the application moved by the defendant-applicant for setting aside the ex parte decree, and, in my opinion, sufficient cause has been shown by the defendant-applicant in not attending the Court on 27-1-1983 and 3-2-1983. Notice was issued to the defendant for filing

written statement on 27-1-1983 and 3-2-1983 was fixed for framing of issues. It is not disputed that 27-1-1983 was a holiday, and. as such, there was no question of defendant putting appearance on that date for filing Written Statement. It has been asserted by the defendant in his application that he could not attend the Court on 3-2-1983 as he had fallen ill and was unable to attend. No counter-affidavit has been filed by the plaintiff-opposite party controverting said fact and only bald denial of said fact has been made by the plaintiff in para 6 of the objection dated 12-4-1983. In the plaintiffs' affidavit dated 14-4-1983 said fact has not been, controverted. Thus, there appears to be no good ground to disbelieve the averments contained in the affidavit of the defendant-applicant. In these circumstances I find that sufficient cause has been shown by the defendant-applicant in not putting appearance on 27-1-1983, 3-2-1983 and 4-2-1983 when the suit was decreed ex parte. The ex parte decree, thus, deserves to be set aside and the application for restoration deserves to be allowed.

16. Before parting with the case it may be mentioned that a controversy was raised on the point as to whether the decreed pendente lite and future damages on which admittedly no court-fee was paid at the time of preparation of decree, should also have been deposited by the defendant or not and the learned counsel for the parties had cited several decisions wherein conflicting view on the point has been expressed, but I do not think it necessary to express any opinion on the said point because in view of what has been said above I find that the learned lower Court has erred in rejecting the application for setting aside ex parte decree as not maintainable, which in my opinion could not be rejected by the learned Court below after having accepted the cash security deposited by the defendant and directing the notices to be issued to the plaintiff-decree-holder, especially when the decretal amount as was indicated in the office report and accepted by the Court was deposited by the defendant. The deficiency, if any. in making deposit of the decretal amount on being pointed out subsequently by the plaintiff in his objection could be got made good by permitting further amount to be deposited by the defendant in exercise of power under Section 351, CPC. especially in the circumstances when the court itself had got a particular amount deposited in cash purporting to be full decretal amount as per office report called by it on the point.

17. In the result, this revision succeeds and is hereby allowed and the order dated 12-4-1983 passed by the VI Additional District Judge, Lucknow dismissing the application moved by the defendant-applicant under Order 9, Rule 13, C.P.C. is hereby set aside and the lower Court is directed to restore in suit to its original number and decide it afresh on merits according to law after giving opportunity to the defendant to contest the suit and to the parties to lead evidence in support of their respective case.

18. In the circumstances of the case, I direct the parties to bear their own costs.