

Azmatullah Khan Vs. Ahmad Ali

LegalCrystal Citation : legalcrystal.com/480341

Court : Allahabad

Decided On : Apr-01-1925

Reported in : 88Ind.Cas.581

Judge : Stuart, J.

Appellant : Azmatullah Khan

Respondent : Ahmad Ali

Judgement :

Stuart, J.

1. The main point for decision in these two revisions is whether there has been substantial compliance with the provisions of Section 17 of Act IX of 1887. A decree had been passed by the Small Cause Court ex parte against Ahmed Ali for Rs. 483-9 and Rs. 56-11 costs. This decree was passed on the 6th September 1924. On the 14th October 1924 Ahmad Ali applied under Section 17 to set aside the ex parte decree and at the time of presenting his application filed a bond by which he hypothecated a house which he asserted was worth Rs. 4,000 as security for the performance of the decree, but in this application he estimated the decretal amount at Rs. 530 instead of Rs. 540-4. The explanation which he gives for this error is that he had miscalculated the costs. He thus professed himself ready to give security for more than seven times the decretal amount and actually had done so.

2. It was ordered that the security should be verified but before steps were taken by the Court to verify it Ahmad Ali paid in cash into Court Rs. 510-4 the full decretal amount as security. It is argued on behalf of the opposite side that Ahmad Ali did not comply with the provisions of Section 17. The leading case in this Court upon the point is Jagan Nath v. Chet Ram 28 A. 470 : 3 A.T.J. 318 : A.W.N. (1906) 93, Applying the principles laid down in that case I consider that there has been substantial compliance with the provisions of Section 17. The applicant was obliged to give full security. He gave full security. The circumstance that he made a genuine error by which he stated the amount for which the security had to be given at Rs. 10-4, less than it really was does not affect the fact that he gave security for more than what was due. His action in depositing the amount in cash later can only be taken as part of the same transaction as had gone before and not as a belated attempt to file security at a date when he was not permitted to file it. By depositing the amount in cash he saved the trouble of further verification. In these circumstances the application must fail. The application for restoring the ex parte decree fails. The application for setting aside the dismissal of the suit on merits has nothing to recommend it. I dismiss both applications with costs.

