

ALLAHABAD HIGH COURT

Babu Ram

Vs

Munna Lal

(Ashworth, J.)

05.01.1927

JUDGMENT

Ashworth, J.

1. This is an application in revision against an order of the Munsif of Pilibhit, dated the 20th May 1926, setting aside an ex parte decree. The present applicants brought a suit against the father of the non-applicant. A written statement was filed in the suit by the father which shows that he must have been served with the summons referred to in Article 164 of the Limitation Act. The father then died. Presumably the non-applicant was brought on the record as a son of the defendant. He, however, failed to appear on the date fixed for the hearing of the case and a decree was passed ex parte against him on the 15th December 1925. On the 19th April 1926, the non-applicant applied for setting aside of the ex parte decree against himself on the ground that, although he was aware of the case against his father being fixed for the 15th December, he had been under the impression that this date was not for final disposal but merely for bringing his name on the record and reached the Court late that day. The Munsif wrote the following order on the application for restoration. The suit restored, The applicant to pay Rs. 7 as costs subject to which the case is restored. Fix 20th May, 1926, for the final hearing. I believe the applicant.

2. It may be mentioned that the case has never been heard owing to this application against the order of restoration.

3. The Munsif's order restoring the case is impugned on two grounds. One is, that the application for setting aside the ex parte decree was beyond time under Article 164 of the Limitation Act. This appears to be correct but it affords, in my opinion, no ground for revision. The plea of limitation presumably was not raised by the present applicant because no reference is made to it by the Munsif. It must, however, be held that the Munsif's granting of the application on the 1st of May 1926, amounted to a decision in law that the application was within time. Such a decision even if wrong does not fall under either Clause (a), (b) or (c) of Section 115 of the Code of Civil Procedure. There has been no illegal or irregular exercise of jurisdiction within the meaning of

Clause (c). In *Sarman Lal v. Khuban*¹ it was held that it is no ground for revision under Section 25 of the Small Causes Court Act that the Court whose order it is sought to revise may have come to an erroneous decision on a point of limitation and in a Full Bench case *Sarman Lal v. Khuban*² it was held that the considerations to be applied to applications under Section 622 of the then Civil Procedure Code, which is now re-placed by Section 115, were practically the same as those applicable to Section 25 of the Small Cause Courts Act. In brief it was held that an erroneous decision on a point of law not connected with the exercise of jurisdiction would not give a right to apply in revision. It has been urged by the applicants' counsel that under the law of limitation the Court had no power to set aside an ex-parte decree and in doing so it exceeded its jurisdiction. This appears to me to be a wrong use of the word "jurisdiction." I am not aware that it has ever been held that a Court wrongly allowing a time-barred application can be said to be acting without jurisdiction. In the Privy Council case *Balakrishna Udayar v. Vasudeva Aiyar*³ it is stated that Section 115 of the Civil Procedure Code is not directed against conclusions of law or fact in which the question of jurisdiction is not involved.

4. Another ground taken is that the lower Court decided the application merely on the opposite party's statement 'without requiring him to produce any further evidence. The lower Court has stated that it believed that party's statement. There is nothing in law to require further evidence in such circumstances.

5. For the above reasons I dismiss this application with costs.

Cases Referred.

1[1895] 17 All. 422

2[1894] 16 All. 476

3[1917] 40 Mad. 793