

Risal Singh  
 v.  
 Chandgi Ram  
 and others  
 Capoor, J.

decided on 3rd of March, 1965. This is an unreported judgment, but there is a brief reference to it in the short notes in 1965 P.L.R. (Note No. 49 at P. 25). It appears that the conviction in that case was for an offence under section 61 of the Punjab Excise Act and the sentence imposed was two month's rigorous imprisonment, but the nature of the particular offence committed is not given, and so it is not possible to derive any help from that judgment.

On the facts of the case before us we are unable to find any error in the view of the learned Single Judge that the offence for which Chandgi Ram respondent was convicted implied no such depravity and wickedness of character or disposition which would involve any moral turpitude. As observed by the learned Single Judge, people keep fire-arms for their personal safety and sometimes they resort to keeping arms without a licence when they feel that their status in society is not such as would enable them to get a licence from the authorities. No doubt they commit a contravention of the law, but it cannot be necessarily postulated that this contravention involved moral depravity and illness of character.

There is, therefore, no force in this appeal, which is dismissed with costs. Counsel's fee Rs. 100.

Grover, J.

A. N. GROVER, J.—I agree.

B.R.T.

#### CIVIL MISCELLANEOUS

*Before Hans Raj Khanna, J.*

M/S AMERICAN FURNISHING HOUSE AND ANOTHER—  
*Petitioners*

*versus*

UDAI RAM,—*Respondent*

C. Misc. 834-D of 1965 in C. R. 380-D of 1959.

1966.  
 February 14th

*Provincial Small Cause Courts Act (IX of 1887)—S. 17(1) Provide—Whether applies to application filed for setting aside an ex parte decree passed by the High Court in revision.*

*Held*, that there is nothing in section 17 of the Provincial Small Cause Courts Act, 1887, to indicate that the procedure laid down in it about the deposit of the decretal amount or furnishing of security mentioned in the proviso to sub-section (1) of section 17 would also apply in case where-in after a suit has been dismissed by the Court of Small Causes, an *ex parte* decree is made by the High Court in a revision petition under section 25 of the Act, and an application is thereafter made to set aside the aforesaid *ex parte* decree. The proviso to sub-section (1) of section 17 of the Act engrafts an exception to the general procedure prescribed by the Code of Civil Procedure which is to apply when an application is made to set aside an *ex parte* decree, and as its provisions place a restriction on the powers of the Court in setting aside an *ex parte* decree even on sufficient cause having been shown, it would be a sound rule of construction to hold that a case would not fall within the ambit of the proviso unless it is strictly covered by the language used therein. In the absence of anything in section 17 to indicate that the provisions of the proviso to sub-section (1) would have to be complied with not only when an application is made to set aside an *ex parte* decree to a Court of Small Causes, but also when an application is made to the High Court to set aside the *ex parte* decree granted by the High Court in a revision petition under section 25 of the Act, the proviso cannot be held to be applicable to the latter contingency.

*Application under section 151, C.P.C., read with order 9 rule 13 C.P. Code, praying that the case be restored on the list and heard on merits.*

G. L. SRIVASTVA, ADVOCATE, for the Petitioners.

ROSHAN LAL SAMBHAR, ADVOCATE, for the Respondent.

### JUDGMENT

KHANNA, J.—The question as to whether the proviso to sub-section (1) of section 17 of the Provincial Small Cause Courts Act (IX of 1887) (hereinafter referred to as the Act), applies to an application filed for setting aside an *ex parte* decree made by the High Court in a revision-petition under section 25 of the Act, arises for consideration in this case. It has arisen in the following circumstances :—

Khanna, J.

Messrs American Furnishing House and Hari Das, plaintiffs, filed a suit for recovery of Rs. 922/8/3 against Udai Ram Bhurji in the Court of Small Causes, Delhi. The suit was contested by the defendant and was dismissed by the

M/s American  
Furnishing House  
and another  
v.  
Udai Ram  

---

Khanna, J.

Additional Judge, Small Causes Court, Delhi, on 11th April, 1959. The plaintiffs thereupon filed a revision-petition under section 25 of the Act to challenge the decision of the Additional Judge, Small Causes Court. The revision of the petitioner came up for hearing before my Lord the Chief Justice on 26th February, 1965. At the time of the hearing the plaintiffs were represented by Mr. G.L. Srivastava but no one appeared on behalf of Udai Ram Bhurji defendant. The learned Chief Justice accepted the revision-petition and granted a decree for recovery of Rs. 922/8/3 with costs in favour of the plaintiffs against the defendant.

The same day application under Order 9, Rule 13 of the Code of Civil Procedure was filed on behalf of the defendant. It was stated that the defendant attended with his counsel at about 10.45 a.m. and learnt that the case had been heard *ex parte*. According to the defendant, his absence at the hearing of the revision-petition was due to misunderstanding as he thought that the revision-petition would not come up for hearing before 10.45 a.m. as there were six motion cases and six regular cases above the revision petition on the cause list of that day. Prayer was, accordingly, made for setting aside the *ex parte* decree and the hearing of the revision-petition on merits in the presence of the defendant.

The application was supported by the affidavit of the defendant. The allegations made in the affidavit have not been controverted and I see no sufficient ground to disbelieve the same. In the circumstances, I am of the view that it is a fit case in which the *ex parte* decree should be set aside and the case be heard on merits in the presence of the defendant.

Mr. Srivastava on behalf of the plaintiffs has, however, raised an objection that the *ex parte* decree cannot be set aside unless the defendant deposits the decretal amount or, in case the Court so directs, furnishes security for the due performance of the decree as contemplated by the proviso to sub-section (1) of section 17 of the Act. The section reads as under : —

“17. (1) The procedure prescribed in the Code of Civil Procedure, 1908, shall, save in so far as is otherwise provided by that Code or by this Act, be the procedure followed in a court of Small Causes in

all suits cognizable by it and in all proceedings arising out of such suits:

M/s American  
Furnishing House  
and another

v.

Udai Ram

Khanna, J.

Provided that an applicant for an order to set aside a decree *ex parte* or for a review of judgement shall, at the time of presenting his application, either deposit in the Court the amount due from him under the decree or in pursuance of the judgment, or give such security for the performance of the decree or compliance with the judgment as the Court may, on a previous application made by him in this behalf, have directed.

- (2) Where a person has become liable as surety under the proviso to sub-section (1), the security may be realized in manner provided by Section 145 of the Code of Civil Procedure 1908."

Section 17 finds a place in Chapter IV of the Act which deals with practice and procedure. Perusal of section 17 reproduced above goes to show that it lays down the procedure to be followed in a Court of Small Causes in all suits cognizable by it. There is nothing in the section to indicate that the procedure laid down in it about the deposit of the decretal amount or furnishing of security mentioned in the proviso to sub-section (1) of section 17 would also apply in case wherein after a suit has been dismissed by the Court of Small Causes, an *ex parte* decree is made by the High Court in a revision-petition under section 25 of the Act, and an application is thereafter made to set aside the aforesaid *ex parte* decree. The proviso to sub-section (1) of section 17 of the Act engrafts an exception to the general procedure prescribed by the Code of Civil Procedure which is to apply when an application is made to set aside an *ex parte* decree, and as its provisions place a restriction on the powers of the Court in setting aside an *ex parte* decree even on sufficient cause having been shown therefor, I am of the view that it would be a sound rule of construction to hold that a case would not fall within the ambit of the proviso unless it is strictly covered by the language used therein. In the absence of anything in section 17 to indicate that the provisions of the proviso to sub-section (1) would have to be complied with not only when

**M/s American  
Furnishing House  
and another  
v.  
Udai Ram  
Khanā, J.**

an application is made to set aside an *ex parte* decree to a Court of Small Causes, but also when an application is made to the High Court to set aside the *ex parte* decree granted by the High Court in a revision-petition under section 25 of the Act, the proviso cannot be held to be applicable to the latter contingency. I would, therefore, hold that it is not essential for the defendant to deposit the decretal amount or to furnish the security in accordance with the proviso to sub-section (1) of section 17 of the Act before the *ex parte* decree is set aside.

The *ex parte* decree is, accordingly, set aside. It is further directed that the main revision petition should be set down for hearing at an early date.

B.R.T.

APPELLATE CIVIL

*Before Harbans Singh, J.*

RAM KISHAN. AND OTHERS,—*Appellants.*

*versus*

JAGDISH KHATAR AND OTHERS,—*Respondents*

Regular Second Appeal No. 581 of 1964.

1966.  
February 16th

*Punjab Pre-emption Act (I of 1913)—S. 17-A—Ostensible vendee—Whether can plead that he is benamidar for another person—Real purchaser—Whether to be made party—Pre-emptor—Whether must prove his pre-emptive right to be superior to the real purchaser also—Punjab Security of Land Tenures Act (X of 1953) S. 17-A—Sale in favour of tenant—Whether pre-emptible.*

*Held*, that it is not uncommon in India for parents to purchase property in the name of their children or for the husband to purchase property in the name of his wife. Unless it can be established that some fraud was intended or involved, generally speaking there is no reason why the real facts may not be allowed to be brought on the record. The ostensible vendee, therefore, can take a plea that the real purchaser is somebody else and he is only a benamidar and once that plea is taken, it is the duty of the Court to find out the truth of this plea and if it is found that someone else is the real purchaser, normally such a purchaser should be made a party and in any case the pre-emptor can succeed only if he can establish that even as against the real purchaser, he has a superior right of pre-emption.