

LETTERS PATENT SIDE.

Before Bhandari, C. J., and Khosla, J.

MEHAR CHAND.—Appellant.

versus

SHIV LAL AND ANOTHER.—Respondents.

Letters Patent Appeal No. 113 of 1951

Civil Procedure Code (V of 1908)—Order XLV, rule 7—Deposit made by appellant—Deposit lost on account of the partition of the Country—Loss of deposit, whether to be borne by the appellant or the Respondent.

Held, that where a party in obedience to an order of court makes a deposit of money in court, a loss thereof must, as between the parties to the proceeding, be borne by him who is found to be entitled ultimately to the fund.

1955

May, 12th

Rup Chand v. Gulzari Lal (1), *Ex parte Banner, In Re: Keyworth* (2), *Gill v. Barbour* (3), and *Thakur Jai Indar Bahadur Singh v. Mst. Brij Indar Kaur* (4), relied upon.

Appeal under clause 10 of the Letters Patent against the judgment of Hon'ble Mr. Justice Harnam Singh passed in E. F. A. No. 65 of 1950 on 27th September, 1951.

K. L. GOSAIN, for Appellant.

P. L. BAIL, for Respondents.

JUDGMENT

Bhandari, C. J. BHANDARI, C. J. This appeal raises the question whether the loss of money deposited in Court under the provisions of Order XLV, rule 7 of the Code of Civil Procedure should be borne by the person who made the deposit or by the person for whose benefit the deposit was made.

The appellant in this case is one Mehar Chand who having lost his case in the Courts in India applied to the High Court at Lahore for permission to prefer an appeal to the Privy Council in England. This permission was accorded in due course and he deposited a sum of Rs. 4,000 under the provisions of rule 7 of Order 45 of the Code of Civil Procedure. Unfortunately for the appellant their Lordships of the Privy Council rejected the appeal and directed him to pay a sum of Rs. 4,762/15/3 by way of costs. On the 1st December, 1948, the respondent initiated proceedings for the recovery of this sum of money and secured the attachment of a shop belonging to the appellant. The latter objected to the attachment on the ground that as he had already deposited a sum of Rs. 4,000 in cash on account of security for costs,

(1) A.I.R. 1954 Punjab 257

(2) (1874) 9 Ch.A. 379

(3) (1885) 80 Va. 11

(4) I.L.R. 5 Luck. 80

the respondent was precluded from executing the decree in respect of this sum and could at best execute the decree for the balance. This objection found favour with the Senior Subordinate Judge and the latter directed the respondent to execute the decree only in respect of the amount which was over and above the amount actually deposited in Court. A learned Single Judge of this Court, however, came to a contrary conclusion. He held that as the deposit in question was the property of the appellant and as it was made by way of security for payment of costs, it was open to the respondent to relinquish this security and to recover the costs of the appeal from the appellant. He accordingly accepted the appeal, set aside the order of the Senior Subordinate Judge and directed the executing Court to execute the decree. The appellant is dissatisfied with the order and has come to this Court in appeal under Clause 10 of the Letters Patent.

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Rule 7 of Order 45 provides that no person shall be at liberty to prefer an appeal to the Privy Council unless he makes an actual deposit of costs for payment to the opposite party or furnishes security for the payment. It has been enacted as much with the object of discouraging litigants from seeking redress at the hands of the highest Court as of securing the payment of damages to the successful party in the event of the appeal being dismissed. Money deposited by a party to an action under the provisions of a statute or in compliance with an order of the Court to await the outcome of litigation is deemed to be in the custody of the law and is not liable either to attachment or to execution. It must remain in the custody of the Court until the result of the

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litigation is known and must be used for the specific purpose for which it was paid (*Rup Chand v. Gulzari Lal* (1)). It ceases to be the property of the person by whom it was paid and is said to belong to the person who is found eventually to be entitled thereto. (*Ex parte Banner, In Re : Keyworth* (2)). American Courts have taken the view that when a party in obedience to an order of Court makes a deposit of money in Court, a loss thereof, must, as between the parties to the proceeding, be borne by him who is found to be entitled ultimately to the fund (*Gill v. Barbour* (3)). A similar view has been taken by the Courts in India, for it has been held by a Full Bench that where the judgment-debtor is proved to have paid money due from him under a decree passed by the Court to the Receiver appointed by the Court for realizing the money, and the Receiver is found subsequently to have misappropriated the money, the loss must fall on the decree-holder alone, for he cannot be allowed to receive the said money again from the judgment-debtor (*Thakur Jai Inder Bahadur Singh v. Mst. Brij Indar Kaur* (4)).

The appellant in the present case was under a statutory obligation either to pay the costs in Court or to furnish security for their payment. He chose the first of the two alternatives and deposited the money in cash in satisfaction of so much of the costs as might be awarded to the respondent. By making the deposit required of him he relinquished all his rights in the money deposited by him and empowered the Court to make such order in regard to the disposal thereof as it thought fit. The Court took charge of the money and held it for the benefit of the person who might

(1) A.I.R. 1954 Punj. 257
 (2) (1874) 9 Ch.A. 379
 (3) (1885) 80 Va. 11
 (4) I.L.R. 5 Luck. 80

be declared ultimately to be entitled thereto. The appeal preferred by the appellant was rejected and the respondent became entitled to the recovery of costs. If on account of the partition of the country the money has been lost or has ceased to become available to the respondent, it seems to me that the loss must be borne by the respondent, for I am aware of no principle of law or equity which would exempt him from liability to bear the loss, if any loss has in fact been sustained.

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For these reasons, I would allow the appeal, set aside the order of the learned Single Judge and restore that of the Senior Subordinate Judge. In view of the peculiar circumstances of the case. I would leave the parties to bear their own costs.

KHOSLA, J. I agree.

Khosla, J.