In the present case a Bench of this Court had interpreted the words which are now complained of in a particular manner and the same words have found place in the new statute although in regard to the appeal section the words have been changed. I am, therefore, of the opinion that the Legislature has accepted the true meaning of these words to be what was stated by a Bench of this Court. I would, therefore, allow this petition and issue a direction setting aside the order of requisitioning and agree with my Lord in the order that the petition be heard from the stage where the matter reached before the competent authority.

APPELLATE CIVIL

Before Khosla and Kapur, JJ.

M. S. CHEMICAL INDUSTRIES LTD., ETC.,—*Defendant-Appellants*

versus

THE HINDUSTAN COMMERCIAL BANK LTD.,—*Plaintiff-Respondent*

Regular First Appeal 100 of 1953.

1954

17th March.

Court Fees Act (VII of 1870) Section 7—Money due from plaintiff to Defendant—Plaintiff suing for specific sum after asking for credit for the loss sustained by him—Court Fee whether payable on the actual amount claimed or upon the amount of the loss alleged for which credit sought—Cross suit by the defendant against the Plaintiff for the amount due from the plaintiff to the Defendant—Plaintiff claiming set off for that amount due from him against the amount of loss caused to him—Whether can be required to pay Court Fee on the amount of set off claimed—Rule in such cases stated.

M.S.C. had cash credit account with the H. C. Bank. M.S.C. owed Rs. 23,976-14-3 to the Bank. M.S.C. claimed a sum of Rs 6,023-1-9, from the Bank in a suit filed on 5th January 1948, alleging that loss to the extent of Rs. 30,000 had been caused to them by the bank and after giving credit for the amount due from them claimed the amount in question. The Bank brought a suit on 16th April 1948, for the recovery of Rs 25,000 the amount due from M.S.C. on the Cash Credit Account. The defence of M.S.C. to the Bank's suit was that after giving credit for the loss caused by the Bank they were due from the Bank a sum of Rs 6,023-1-9. Bank in its written statement to M.S.C.'s suit took the plea that court fee should have been paid on

Rs 30,000. Trial Court accepted this plea and ordered Court Fee on Rs 30,000 to be paid by M.S.C. in that suit. In Bank's suit it ordered M.S.C. to pay Court Fee on the set off claimed i.e. Rs 25.000. The Court fee being not paid M.S.C.'s suit was dismissed and Bank's suit decreed. M.SC. moved the High Court in revision.

Held, that under section 7(1) of the Court Fees Act the court fee is to be paid according to the amount claimed. The amount claimed being 6,023-1-9 the Court Fee on that alone was payable notwithstanding that the court had to adjudicate upon the loss sustained by the plaintiff. Plaintiff cannot be called upon to pay Court Fee on a sum decree for which he is not claiming but which he has only alleged in order to arrive at the figure which he wants to be decreed in his favour.

Held further, that where a suit and a cross suit have both been filed and proper court fees have been paid by plaintiffs in both the suits, and the written statement in the former is practically worded in the same manner as the plaint in the latter, the Court in the former suit cannot treat the written statement as claiming a set off and demand *ad valorem* court fee from the defendant. The defendant in other words cannot be called to pay a double court fee, firstly upon the written statement as set off and secondly again on his plaint in the cross suit.

Qayam-ud-Din v. *The Delhi Flour Mills Company, Ltd.* (1) *D. S. Abraham and Co.* v. *Ebrahim Gorabhoy* (2) and *P. R. Athimuthu Nadar* v. *K. C. Subramania Nadar* (3) relied upon.

Regular First Appeal from the decree of Shri H. D. Loomba, Sub-Judge, 1st Class, Delhi, dated 23rd May 1953, granting the plaintiff a decree for Rs. 25,000 with interest and costs against the defendants.

BISHAN NARAIN, HANUMAN PARSHAD and J. L. BHATIA, for Appellants.

D. D. KAPUR and H. P. WANCHOO, for Respondent.

JUDGMENT.

Kapur, J. KAPUR, J. This judgment will dispose of the two appeals and two revisions which have been brought by M. S. Chemical Industries, Limited, against two decrees and two orders which have arisen in the following circumstances—

(1) 61 P.R. 1919.
(2) A.I.R. 1925 Rangoon 65.
(3) A.I.R. 1949 Mad 671.

Messrs M. S. Chemical Industries, Limited had a cash credit account with the Hindustan Commercial Bank, Limited. There was due from them to the Bank a sum of Rs 23,976-14-3. They alleged in the plaint in the suit which was brought on the 5th January, 1948, that the Bank had unlawfully demolished their chimney and had thus caused them loss of Rs 30,000. They claimed a sum of Rs 6,023-1-9, after deducting the amount due from them on the cash credit account.

The Hindustan Commercial Bank, Limited brought a suit on the 16th April, 1948, for the recovery of Rs 25,000 being amount due on the cash credit account. In their written statement Messrs. M. S. Chemical Industries, Limited pleaded in paragraph 11—

> "A sum of Rs 6,023 is due to this defendant and that on account of plaintiff's demolishing the furnace this defendant suffered a loss of Rs. 30,000. The debit balance on that date was Rs. 23,976-14-3, **i.e., a sum of Rs. 6,023-1-9 ought to have** been credited to the account of this defendant by the plaintiff Bank. This defendant has filed a separate suit much earlier than the suit filed by the plaintiff for the recovery of the balance amount after adjusting the sum of Rs 23.976-14-3, out of the total loss of **Rs. 30,000.**

In paragraph 15 they pleaded—

> "The suit of the plaintiff is false and frivolous to the knowledge of the plaintiff and may be dismissed with costs * * *."

In the suit of Messrs M. S. Chemical Industries Limited a plea was taken by the Bank that the claim was not properly valued and that court-fee was payable on a sum of Rs 30,000, which found favour with the learned trial Judge. In the suit which had been brought by the Bank the learned

M. S. Chemical Industries, Ltd., etc. *v.* The Hindustan Commercial Bank, Ltd.

Kapur, J.

Judge ordered that the defendants should pay a court-fee on Rs 25,000, as that is the amount which they were claiming as a set off. Thus Messrs M. S. Chemical Industries Limited were required to pay court-fee on Rs 30 000 in their own suit and on Rs 25,000, i.e., the amount of the set off which they were alleged to have claimed in the suit brought by the Bank. As the amounts claimed were not paid the suit of Messrs M. S. Chemical Industries, Limited was dismissed and a decree was passed in favour of the Bank in their suit. Two appeals have been brought against the dismissal of the suit of Messrs M. S. Chemical Industries Limited and the decree passed against them in the suit brought by the Hindustan Commercial Bank Limited. The two revisions are directed against the orders passed by the learned Judge calling upon them to pay court-fee.

I shall first take up the suit brought by Messrs M. S. Chemical Industries Limited. In the relief clause they stated—

> "It is therefore prayed that a decree for Rs 6,023-1-9, with costs of the suit be passed in favour of the plaintiff against the defendant and such other relief which the Court may deem fit be granted to the plaintiff against the defendant."

Now the amount claimed in this suit is Rs 6,023-1-9 and section 7(1) of the Court Fees Act provides—

> "7. The amount of fee payable under this Act in the suit next hereinafter mentioned shall be computed as follows—
>
> (i) In suit for money (including suits for damages or compensation, or arrears of maintenance of annuities, or of other sums payable periodically) according to the amount claimed."

The court-fee is to be paid according to the amount claimed. The question for decision in the present case is what was the amount claimed by Messrs. M. S. Chemical Industries Limited. In my opinion it is Rs 6,023-1-9 and it is on that amount that court-fee is payable. In a case decided by the Punjab Chief Court *Qayam-ud-Din* vs. *The Delhi Flour Mills Company, Ltd.* (1) the plaintiff claimed that Rs 3,625 were due to him from the defendant by way of damages for breach of contract and also alleged that Rs 2,500 were due by him to the defendant as price of certain goods received, thus claiming Rs 1,125-4-0, and it was held that the proper court-fee payable was on this sum notwithstanding that the Court had to adjudicate upon the loss sustained by the plaintiff on account of the breach of contract which was estimated at Rs 3,625-4-0. In the present case also the amount which the plaintiff company was claiming was Rs 6,023-1-9 which was made up of Rs 30,000 which they claimed as damages minus the amount which was due from them on the cash credit account. This judgment is on all fours with the present case and I am in respectful agreement with it.

In another case which is from Rangoon, *D. S. Abraham & Co.* v. *Ebrahim Gorabhoy* (1), it was held that the valuation of a plaint in which a money decree is claimed is based on the actual sum claimed after allowing for deductions, such as sums expressly set-off in the plaint. On principle also, I cannot see how a plaintiff can be called upon to pay court-fee on a sum a decree for which he is not claiming but which he has only alleged in order to arrive at the figure which he wants to be decreed in his favour. I am, therefore, of the opinion that the learned trial Judge was in error in calling upon the plaintiff Company to pay a court-fee on Rs 30,000 on the plaint presented by them and I would allow their appeal and set aside the decree of the trial Court dismissing their suit for non-payment of court-fee.

(1) 61 P.R. 1919.
(2) A.I.R. 1925 Rangoon 65.

M. S. Chemical Industries, Ltd., etc.
v.
The Hindustan Commercial Bank, Ltd.

Kapur, J.

Coming now to the suit brought by the Hindustan Commercial Bank, I am of the opinion that the defendants Messrs. M. S. Chemical Industries Limited have not really claimed a set off in paragraph 11 of their written statement. But even if they have, it is really calling upon them to pay a double court-fee. The two suits were consolidated and thus the plaint of Messrs M.S. Chemical Industries Limited in their suit became the written statement of that Company in the suit brought by the Bank. Unfortunately in the Code in India there is no express provision for consolidation and the suits are technically treated as two suits although they are really one. In cases such as these, in my opinion, the rule laid down by the Madras High Court in *P.R. Athimuthu Nadar* v. *K. C. Subramania Nadar* (*1*) would be applicable. There it was held that where a suit and a cross suit have both been filed and proper court-fees have been paid by plaintiffs in both the suits, and the written statement in the former is practically worded in the same manner as the plaint in the latter, the Court in the former suit cannot treat the written statement as claiming a set off and demand *ad valorem* court fee from the defendant. The defendant in other words cannot be called upon to pay a double court-fee, firstly upon the written statement as set-off and secondly again on his plaint in the cross suit. Significantly enough no case was even cited in the Madras case in support of the view which the learned trial Judge in the case before us has taken, nor has any authority been brought to our notice and the researches of counsel have not been successful in assisting the Bank in supporting the plea which they successfully took before the learned trial Judge. In my opinion the learned Judge was in error in this case also and the defendant Company i.e., Messrs. M. S. Chemical Industries Limited could not be called upon to pay court fee on their written statement. I am therefore of the opinion that this appeal should also be allowed and the decree of the trial Court set aside.

(1) A.I.R. 1949 Mad. 671.

As a result of this it is not necessary to decide the petitions for revision.

The appeals having been allowed the cases must go back to the trial Court for decision in accordance with law.

The parties have been directed to appear in the trial Court on the 5th April 1954. The court-fee paid by the appellant before us in the two appeals shall be refunded and costs will be costs in the cause.

Khosla J.—I agree.

REVISIONAL CIVIL

Before Bhandari, C. J.

S. SANTOKH SINGH,—*Petitioner*

versus

BHAI SIRI RAM AND 9 OTHERS,—*Defendants-Respondents*

Civil Revision No. 276 of 1953

1954

26th March.

Stay—Preliminary decree for accounts—Accounting whether should be stayed pending appeal—Rule in such cases stated—Civil Procedure Code, Order 41. Rule 5—Effect of—Practice contrary to the provisions of law—Whether can be recognized

Held, that the court will not stay taking accounts pending an appeal unless an irreparable injury would otherwise be caused. It is unreasonable that save in exceptional circumstances an unsuccessful litigant should be permitted to protract the litigation by requiring that accounts should not be taken until after the appeal has been heard and decided.

Held further, that an established practice cannot be countenanced by the court if it is contrary to express provisions of law. Rule 5, Order XLI of the Civil Procedure Code declares in unnambiguous language that an appeal shall not operate as a stay of proceedings under a decree or order appealed from except so far as the appellate court may order. The use of the word 'may' confers a discretion on the Court to stay or not to stay proceedings and it is idle to suggest that this discretion must always be exercised in favour of the appellant. The matter is one of discretion and the High Court can interfere only if the Court below has acted on wrong principles.