of a Government servant, who was compulsorily retired after 25 years' service. Retirement in that case was ordered because of three specific items of misdemeanour, but as the order of retirement said nothing about his misconduct, it was held that the retirement was not by way of punishment. The cases of *Dhingra* and *Ram Narayan Das*, to which a reference has already been made above, are similar in this respect. I cannot, therefore, hold that the reversion of the petitioner to the rank of Assistant Superintendent of Police was by way of punishment. Nor is there any force in the argument that the petitioner's further promotion has for ever been barred. We were asked to examine the personal file of the petitioner, and on examining it we found that the reasons which prompted his reversion in the present instance were not the reasons which led to the framing of a charge-sheet against him. But even if the framing of the charge-sheet and the order of reversion had proceeded from the same set of circumstances, it would have made no difference to the case, because the order reverting him cannot *per se* be interpreted as an order inflicting punishment upon the petitioner.

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In this view of the matter, this petition must be dismissed and I would dismiss it, but make no order as to costs.

S. S. DULAT, J.—I agree.

Dulat, J.

B.R.T.

REVISIONAL CIVIL

Before G. D. Khosla, C.J.

M/s RAM SARAN DASS-TARA CHAND,—*Petitioner*

versus

RAM RICHHPAL AND ANOTHER,—*Respondent*

Civil Revision No. 121-D of 1957.

Code of Civil Procedure (V of 1908)—Order 22—Whether applies to revision petitions—Provincial Small-Cause Courts

Act (IX of 1887)—Section 17—Exparte decree passed—Judgment-debtor applying for setting aside of the decree on the same day and depositing Rs. 360 whereas the decree, when prepared, showed decretal amount as Rs. 377-4-0 Application—Whether entertainable.

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Jan., 25th

Held, that Order 22 of the Code of Civil Procedure relates only to suits and appeals. The main body of the Order speaks of suits and rule 11 covers the question of appeals. Nothing whatsoever is said about revision petitions. The decree of the Judge, Small Cause Court is a final decree. No appeal lies from this decree and, therefore, it cannot be said that the proceedings of the trial Court are being continued in the High Court. An appeal is always a continuation of the suit, but a revision petition cannot be said to be so.

Held, that the object of section 17 of the Provincial Small Cause Courts Act is to prevent the filing of frivolous applications for setting aside an *ex parte* decree in cases where the judgment-debtor has been negligent or has deliberately remained away from the Court. Money suits are treated on a priority basis, and where a money decree has been passed by a Court of Small Causes, no appeal is competent. Also when an *ex parte* decree is passed, an application to set aside the *ex parte* decree will not be entertained unless in accordance with the provisions of section 17 the decretal amount is deposited. This merely means that the judgment-debtor should, as a guarantee of his *bona fides*, deposit the money which is due to the decree-holder. It was not intended that there should be a literal compliance with the provisions of this section where such literal compliance will have the result of defeating the ends of justice. Substantial compliance with the provisions of this section is enough.

Petition under section 25 of Act IX of 1887 for the revision of the order of Shri Om Parkash Saini, Additional Judge, Small Cause Court, Delhi, dated .15th December, 1956, dismissing the application.

C. R. CHOPRA, ADVOCATE, for the Petitioner.

D. D. CHAWLA, ADVOCATE, WITH MR. MAHARAJ KISHAN CHAWLA, ADVOCATE, for the Respondent.

ORDER

Khosla, C.J.

G. D. KHOSLA, C.J.—This revision petition arises out of an order made by the Court of Small Causes. The facts briefly are that the plaintiff, who is the respondent before me, brought a suit for the recovery of Rs. 320. An *ex parte* decree for Rs. 377-4-0 was passed in his favour on 18th July, 1956. On the same day the judgment-debtor applied for setting aside the *ex parte* decree, and in accordance with the provisions of section 17 of the Provincial Small Cause Courts Act deposited a sum of Rs. 360 along with his application. Under the provisions of section 17 he was required to deposit the decretal amount. The decree-sheet at that time had not been prepared, and the judgment-debtor, while depositing the amount of Rs. 360, did not take into account two miscellaneous items of Rs. 14-12-0 and Rs. 5-8-0. When the decree-sheet was prepared, it was found that the amount deposited was short by Rs. 17-4-0 (the figure is wrongly given in the order of the Additional Judge, Small Cause Court, and the revision petition as Rs. 14-7-0). The question accordingly arose whether the application for setting aside the *ex parte* decree should be entertained or not. The Additional Judge, Small Cause Court, took a strictly literal view of section 17 and, holding that the entire decretal amount had not been deposited by the judgment-debtor, declined to entertain the application and rejected it. Against this order the judgment-debtor brought a revision petition to this Court.

The decree was in favour of two persons, Ram Nath and Ram Rachhpal, jointly. Of these, Ram Rachhpal died, after the petition had been filed in this Court, on 19th June, 1959. No application to bring his legal representatives on record was made by the petitioner and so objection was taken that

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the revision petition had abated under the provisions of Order 22, Rule 4, Civil Procedure Code. As against this, it was urged that the provisions of Order 22, Civil Procedure Code, do not apply to revision petitions and that their application is confined to suits and appeals.

The preliminary matter before me, therefore, is whether the petition can be said to have abated or not. A reference to Order 22, Civil Procedure Code, shows that it relates only to suits and appeals. The main body of the Order speaks of suits, and rule 11 covers the question of appeals. Nothing whatsoever is said about revision petitions. The decree of the Judge, Small Cause Court, in the present case, is a final decree. No appeal lies from this decree and, therefore, it cannot be said that the proceedings of the trial Court are being continued in this Court. An appeal is always a continuation of the suit, but a revision petition cannot be said to be so. A Full Bench of the Rajasthan High Court took this view in *Babulal and another* v. *Mannilal* (1). The learned Judges of that Court held that a revision is a discretionary remedy and Order 22, Civil Procedure Code, applies to the cases of suits and by virtue of rule 11 also to the cases of apeals; it does not govern the cases of revision applications. The same view was expressed by the Lahore High Court in a Full Bench decision, *Mohd. Sadaat Ali Khan* v. *The Administrator, Corporation of City of Lahore* (2), With great respect I find myself in agreement with the views expressed by the learned Judges in these two Full Bench cases. Therefore, the failure of the Petitioner to bring on record the legal representatives of Ram Rachhpal, does not result in the abatement of the petition and the matter can be heard on merits.

(1) A.I.R. 1953 Raj. 169.
(2) A.I.R. 1949 Lah. 386.

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On merits, it seems to me that the learned trial Judge has taken too strict and too literal a view of the provisions of section 17. The object of section 17 is to prevent the filing of frivolous petitions for setting aside an *ex parte* decree in cases where the judgment debtor has been negligent or has deliberately remained away from Court. Money suits are treated on a priority basis, and where a money decree has been passed by a Court of Small Causes, no appeal is competent. Also when an *ex parte* decree is passed, an application to set aside the *ex parte* decree will not be entertained unless in accordance with the provisions of section 17 the decretal amount is deposited. This merely means that the judgment-debtor should, as a guarantee of his *bona fides,* deposit the money which is due to the decree-holder. It was not intended that there should be a literal compliance with the provisions of this section where such literal compliance will have the result of defeating the ends of justice. In the present case, the decree-sheet had not been prepared. It was not known what the amount due to the decree-holder was. The judgment-debtor made an estimate and allowed for all possible items that he could think of. He then deposited the amount calculated by him in Court. The plaintiff's claim was for Rs. 320 The judgment-debtor deposited Rs. 360 allowing Rs. 40 for costs. The costs, as actually calculated when the decree sheet was prepared, came to Rs. 57-4-0. The extra items were service of process Rs. 14-12-0 and miscellaneous Rs. 5-8-0. In the circumstances, I must hold that the judgment-debtor complied substantially with the requirements of section 17. In the two rulings cited by the trial Judge, *Purna Chandra Sarkar* v. *Rassoral Pramanik* (1), and *Sri Bhagwat Chaudhri and others* v. *Balkaran Saithwar and another* (2), it

(1) 33 I.C. 133.
(2) 65 I.C. 596.

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was held that a substantial compliance with the provisions of section 17 is not sufficient, but it seems to me that to take too literal a view of the wording of this section would entail undue hardship and injustice upon a party who could not possibly know at the time of making the application what was the exact decretal amount. This is exactly what happened in the present case.

I must, therefore, hold that the trial Judge was wrong in refusing to entertain the application for setting aside the *ex parte* decree against the petitioner, and allowing this petition remand the case to the trial Court for the decision of this application upon merits.

The costs in this Court will be costs in the suit.

B.R.T.

APPELLATE CIVIL

Before Shamsher Bahadur, J.

WARYAM SINGH,—*Appellant.*

versus

PRITPAL KAUR,—*Respondent.*

First Appeal from Order No. 47-M of 1960.

Hindu Marriage Act (XXV of 1955)—Section 13 (1) (viii)—Decree for judicial separation obtained by wife against her husband—Whether entitles husband to apply for dissolution of marriage after the expiry of two years from the passing of such decree—Decrees for judicial separation and dissolution of marriage—When to be passed.

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Jan., 27th.

Held, that a decree for judicial separation can only be granted at the instance of an innocent party and against the spouse who has been guilty of the matrimonial wrongs mentioned in section 10 of the Hindu Marriage Act, 1955. Likewise a decree for dissolution of marriage under section 13 of the said Act may be granted to an innocent party if