

In Re: Shiv Lal Padma

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Court : Mumbai

Decided On : Nov-25-1909

Reported in : 5Ind.Cas.862

Judge : Chandavarkar and ;Batchelor, JJ.

Appellant : In Re: Shiv Lal Padma

Judgement :

Chandavarkar, J.

1. The question, in this case, is whether a Full Court of the Presidency Small Causes Court in Bombay has power to grant or revoke sanction refused or granted by a single Judge of that Court. The determination of that question depends upon the further question whether the Full Court is a Court of appeal, or whether if it is not a Court of appeal, it is a Court of ordinary original jurisdiction within the meaning of Clause 7 of Section 195 of the Criminal Procedure Code. As regards the Full Court, it ought to be borne in mind that there is no mention of or provision for it in the Presidency Small Cause Courts Act. This has been pointed out in a decision of this Court in *Behram Kaikhushru Irani v. Ardeshir Kavasji* 27 B. 563 : 5 Bom. L.R. 555. As held there, it is a Court which has obtained its legality and status owing to a long continued practice. And there it was also held that, though no rules had been framed as to the exercise by the Full Court of any powers under the Act, it did not follow that the sittings of that Court were ultra vires. It is the long

practice which has given it its validity. But that decision left the question untouched as to whether the jurisdiction exercised by the Full Court was of an appellate or revisional character. Its determination depends on the construction of sections 37 and 38 of the Presidency Small Cause Courts Act, XV of 1882. Now, these sections occur under Chapter VI of the Act. That Chapter is headed 'New Trials and Appeals.' No doubt the heading of a chapter is a key to the construction of the enactment, as has been pointed out by Lord Macnaghten in his judgment in *Arrow Shipping Co. v. Tyne Improvement Commissioners* (1894) A.C. 508 : 63 L.J. Adm. 146 : 6 R. 258 : 71 L.T. 346 : 7 Asp. 513. But it is a key, only where the main provisions of the sections which occur under that heading or chapter are ambiguously worded. Here it is clear that the words of the heading of the Chapter mean no more than that the Chapter deals with the question of new trials and appeals. That does not mean that an appeal is allowed but it means that the Chapter concerns the question. How that question is solved must be decided on the provisions of the sections of the Chapter. Section 37 says: 'Save as otherwise provided by this Chapter or by any other enactment for the time being in force, every decree and order of the Small Causes Court in a suit shall be final and conclusive.' That means that ordinarily a decree of a Presidency Small Causes Court is not appealable. Then Section 38 goes on to provide that, 'the Small Causes Court...may order a new trial to be held, or alter, set aside, or reverse the decree or order, upon such terms as it thinks reasonable.' Does this language amount to an appellate jurisdiction conferred upon the Full Court? This is an Act of the legislature of the Government of India, and, in construing these sections, we may well call in aid the language used by the same legislature in other Acts as to the right of appeal. For instance, in the Civil Procedure Code and in the Criminal Procedure Code, in conferring an appellate jurisdiction upon a Court apt language has been used, the words used being 'an appeal shall lie'. Here the provisions of the section do not use the word 'appeal' at all. And that view, I think, is further strengthened by this circumstance, that where a right of appeal is given to a party, it means from a lower to higher Court, for instance in our High Court, where there is a judgment by a single Judge, sitting as a Court, there is an appeal under the Letters Patent to a Court consisting of two Judges. But here the Act makes no distinction between a Judge and more than one Judge of the Presidency Small

Causes Court. What is spoken of is the Small Causes Court, whether it consists of one Judge or more than one Judge. Therefore, the jurisdiction here conferred is not necessarily upon a Bench consisting of more than one Judge. Therefore, the language used in the sections does not appear to me to be appropriate for the purpose of conferring appellate jurisdiction upon the Full Court. It is all the more necessary to arrive at that conclusion having regard to the decision of Behram v. Ardeshir 27 B. 563 : 5 Bom. L.R. 555 which says that the Full Court is merely a creature of practice. There is no provision for it in the Presidency Small Cause Courts Act. Therefore, we should not extend its powers beyond those, which have been recognised up to now unless there is anything express in the Act, which justifies the extension of these powers.

2. For these reasons, I am of opinion that the Full Court was right in holding that it had no jurisdiction to interfere with the sanction granted by the fifth Judge of the Small Cause Court. This application is rejected and the rule discharged.

Batchelor, I.

3. I am of the same opinion. I think that in order that Mr. Dadyburjor should succeed in his application, it is necessary for him to show that under the Presidency Small Cause Courts Act, XV of 1882, appeals ordinarily lie from the decision of a single Judge to the Full Court, (See Section 195 of the Criminal Procedure Code). That is a proposition which, in my opinion, it is impossible to maintain. The question turns upon the meaning of Section 38 of the Presidency Small Cause Courts Act, and I have no hesitation in thinking that the jurisdiction conferred by that section is not appellate, but revisional only. The words used are apt for the purpose of expressing the grant of revisional jurisdiction and they are very inapt for the other purpose. No right is conferred upon the defeated litigant, but a power is conferred upon the Court and it is noteworthy that the Court concerned is the same Court--the Small Cause Court--with which other sections of the Act deal.

4. Moreover, if Mr. Dadyburjor's argument were right, then the result of Section 38 would be this: that in case of every single decree passed in a contested suit there would be a right of appeal. That view is, I think, opposed both to the general

scheme of this Act and to the language of Section 37, which must be read together with Section 38. For these reasons, I agree with my learned colleague in thinking that this application should be refused.

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