

**Ramesh Chandra Sahu Vs. Subhash Chandra**

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**Court :** Allahabad

**Decided On :** Apr-14-1988

**Reported in :** AIR1988All246

**Judge :** A.P. Mishra, J.

**Acts :** [Provincial Small Cause Courts Act, 1887](#) - Sections 25

**Appeal No. :** Civil Revn. No. 32 of 1988

**Appellant :** Ramesh Chandra Sahu

**Respondent :** Subhash Chandra

**Advocate for Def. :** M.S. Pipersenia, Adv.

**Advocate for Pet/Ap. :** S.M. Chaturvedi, Adv.

**Disposition :** Revision dismissed

**Judgement :**

ORDER

**A.P. Mishra, J.**

1. Heard counsel for the applicant. The present revision is directed as against the order dated 28-11-87 passed by the IVth Additional District and Sessions Judge Jhansi by virtue of which he rejected the application of the present applicant for

leave to serve interrogatories on the plaintiff-opposite party.

2. Preliminary objection has been raised in this case that this is not a 'case decided' and the court should not interfere in the present proceeding as the applicant would have right to object finally at the time when final order is passed in the said suit. This point is covered by a decision of this Court reported in Maheshwari Oil Mill v. M/s. Girjanath Durga Saran, AIR 1980 AH 265 wherein it has been held that 'when the court exercises its judicial discretion in granting or refusing to grant leave to deliver interrogatories, it cannot be said to be an adjudication of some right or obligation of the parties in controversy. 'The order does not amount to case decided'. In fact, in Major S.S. Khanna v. Brig. F.J. Dillon, AIR 1964 SC 497 and in Baldevdas Shivilal v. Filmistan Distributors (India) Ltd, AIR 1970 SC 406 the principle has been clearly enunciated that unless there is case decided it could not be revisable on the facts of the present case appropriately. The impugned order is not such to which it could be said that it is a case decided and is in the nature of interlocutory order and is not revisable. In Sub-clause (1) of ,Section 25 of the Small Cause Courts Act the . language is very clear which is quoted below :

'For the purpose of satisfying himself that a decree or order made in any case decided by a Court of Small Causes was according to law.'

Therefore, the principle as mentioned and made applicable to Section 115 would be applicable even to Provincial Small Cause Courts Act as the language is identical therein. The very purpose of the Act is that the proceedings should not be thwarted or belated by filing the revision even against the interlocutory order.

3. Learned counsel for the applicant on the other hand relied on a decision reported in State Bank of India Faizabad v. Hari Narain, 1980 All LJ NOC 8 p. 11. In this case it has been held :

'In a case decided' in Section 25 Provincial Small Cause Courts Act being an expression of comprehensive import could not be confined to final determination of the proceedings but would cover orders in interlocutory matters and on preliminary issues affecting the rights of the parties.'

Thus it has also relied on the use of word 'Order' and 'decree' under the same section thereby making it clear that not only final order but even interlocutory order is also revisable. It is true that even interlocutory order could be a case subject to revision according to this decision under Section 25 of the Small Cause Courts Act. However, the question still remains whether the words used 'case decided' under Section 25 of the said Act would also apply to the present interlocutory matters. Only those interlocutory order could be revisable affecting the right of the parties. It is also true that the principle laid down under Section 115 that interlocutory order is not revisable may not come under the terms of Section 25 of the Provincial Small Cause Courts Act but there is no difference to the meaning of the 'case decided' as it would be the same which has been used under Section 115 and also under Section 25 of the aforesaid Act. In *Maheshwari Oil Mill v. Girjanath Durga Saran* (supra) it has been held that refusal to certain interrogatories could not be a 'case decided'. Similar situation is in the present case and in view of this it would not amount to 'case decided' as it does not affect any of, his rights which is subject matter of decision in the said suit.

4. In view of the above observations and decisions referred to hereinbefore, the present revision is dismissed as the impugned order does not come within the definition of the 'case decided'. The stay order dated 29-1-1988 is also vacated.

5. However, it is made clear that it would be open to the applicant to raise this issue when final order is passed if he is aggrieved. Since it is old matter, the court below shall decide it expeditiously.

6. Certified copy of this order may be given to the counsel for the parties on payment of usual charges within three days.

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