

Mahadeo Prasad Vs. Girdhari

Mahadeo Prasad Vs. Girdhari

SooperKanoon Citation : sooperkanoon.com/480347

Court : Allahabad

Decided On : Dec-12-1934

Reported in : AIR1935All372; 159Ind.Cas.35

Appellant : Mahadeo Prasad

Respondent : Girdhari

Judgement :

ORDER

Bennet, J.

1. This is an application by the plaintiff in civil revision under Section 25, Small Cause Court Act, against the decree of a Small Cause Court passed in terms of an award dismissing the suit of the plaintiff. One ground is taken, ground No. 4 which is a point of law that the award was invalid in form. The award stated:

I am of opinion that the plaintiff's case is not proved. I accordingly recommend the Court to dismiss the suit of the plaintiff with costs.

2. Learned Counsel argues that the award should say 'I dismiss the suit.' No authority is given for that proposition and there is nothing in the second schedule to, indicate that an arbitrator should dismiss a suit. I consider that the function of an arbitrator is to come to a decision on the issues which have been referred to him and when his award is received the Court decides the suit and it is not for the

arbitrator to dismiss or decree the suit. Section 16, Schedule 2, indicates that it is the function of the Court to pronounce judgment and not the function of the arbitrator.

3. The remaining three grounds deal with alleged irregularities by the arbitrator. These allegations were the subject of objections taken by the plaintiff to the award and the lower Court has considered these objections and found that the plaintiff has failed to prove the objections. In the revision no ground is taken alleging any irregularity of the procedure of the lower Court. It is only the procedure of the arbitrator to which objection is taken. Learned Counsel argued that under Section 25, Provincial Small Cause Courts Act, he could raise again in this Court issues on questions of fact which have been decided against him by the Small Cause Court and counsel for this proposition relied on two rulings. In one of these rulings, *Bhairon Prasad v. Amina Begam* 1916 All. 33, this Court held that there was no evidence before the Small Cause Court for a finding of fact by that Court. The present case is different because there was evidence before the lower Court and it came to a decision on conflicting evidence. The second ruling referred to was *Rebecca Stewart v. Debi Prasad* 1914 All. 153. In that case a learned Single Judge of this Court admitted evidence of an affidavit in revision and came to a finding of fact contrary to a finding of fact of a Small Cause Court. The ruling does not explain under what provisions of law the learned Judge considered that he was justified in acting. The mere fact that he did so act is not in my opinion a ground showing that he was entitled to do so. The language in Section 25 states that this Court may satisfy itself that the decree or order by the Small Cause Court was according to law. This expression 'according to law' is parallel to the language in Section 100(1)(a), Civil P.C. which states that one of the grounds for a second appeal is 'the decision being contrary to law.' Apparently therefore the expression in Section 25, Provincial Small Cause Courts Act, limits this Court in revision to grounds of law that might be raised in a second appeal and it does not cover a revision on question of fact. Questions of fact may be raised in a first appeal. A first appeal is governed by Section 96, Civil P.C. That section states: 'save where otherwise expressly provided in the body of this Code or by any other law for the time being in force, an appeal shall lie from every decree passed by any Court exercising original jurisdiction to the Court authorized to hear appeals from the

decisions of such Court.' The language used in this sub-section is perfectly general and it is stated merely that 'an appeal shall lie.' This covers not only an appeal on points of law but an appeal on question of fact. I do not find that there is anything in Section 25, equivalent to the words 'an appeal shall lie' and there is nothing in that section to indicate that questions of fact can come before this Court in revision from a Small Cause Court. Accordingly in my view the grounds Nos. 1 to 3 of this application in revision are grounds which cannot be heard by this Court in revision under Section 25, Provincial Small Cause Courts Act. I therefore dismiss this application in revision with costs.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com