Suit of Collett and anr. Vs. Armstrong

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Court : Kolkata

Decided On : Jun-02-1887

Reported in : (1887)ILR14Cal526

Judge : Trevelyan, J.

Appellant : Suit of Collett and anr.

Respondent : Armstrong

Judgement :
ORDER

Trevelyan, J.

1. In this case I am asked to exercise the power given: to this Court by Section 622 of the Civil Procedure Code and to set aside an order made by Mr. Millett, the Chief Judge of the Calcutta Small Cause Court, refusing to permit the plaintiffs to institute this suit in the Calcutta Small Cause Court

2. The suit which the plaintiffs sought to institute was for the purpose, of recovering the sum of Rs. 23-7, the price of goods sold and delivered to the defendant in Calcutta. The defendant is residing at Lucknow. The goods were sold to the defendant in Calcutta, and were delivered to the East Indian Railway in Calcutta for transport to the defendant.

3. The 18th section Of the Presidency Small Cause Court Act of 1882 provides that, subject to certain Exceptions (which do not apply to this case), 'the Small Cause Court shall have jurisdiction to try all suits of a civil nature, when the amount or value of the subject-matter does not exceed two thousand rupees ; and the cause of action has arisen, either wholly or in part, within the local limits of the jurisdiction of the Small Cause Court, and the leave of the Court has, for reasons to be recorded by it in writing, been given ;before the institution of this suit.'

4. Mr. Woodroffe, who appears for the plaintiffs, contends that this section gives no discretion to the Judge of the Small Cause Court, but I do not agree with this contention. The provision in this Act is similar to the provision in Section 12 of the High Court Charter, and the word 'leave' in that section of the Charter has always been construed as giving discretion to the Court. It is true that in very rare instances has the High Court, when leave to sue has been applied for, refused such leave ; but although I know of no instances in my own experience, I believe that occasionally leave has been refused, and ill has always been assumed that the High Court has this discretion. In the case of Wallis v. Taylor 13 C. 37 Mr. Justice Pigot refers to the Small Cause Court having discretion under Section 18. This case is, I think, an authority on this point.

5. The question here is, has Mr. Millett exercised his discretion or has he not In consequence of statements made by Mr. Adkin in the affidavit, which formed the grounds of this application, Mr. Millett has very properly sent up an explanation of what occurred. In that explanation he does not say expressly why in this particular case he refused leave to sue, but he denies the suggestion that he always refuses leave in cases under Rs. 100, and furthermore says that what he told Mr. Adkin was that, 'since: the case of Wallis v. Taylor 13 C. 37 and having regard to the great caution enjoined on the Small Cause Court by the High Court in the case of granting leave (not of refusing it) he had thought it proper not to give leave to Sue defendants long distances off for comparatively small sums of money.' As I understand it, Mr. Millett applied to this case a rule which he seems to have framed from Wallis v. Taylor, viz. that leave should not be given to sue defendants long distances off for comparatively small sums of money. It appears that Mr. Millett has not acted upon the rule suggested by Mr. Adkin, namely, never to give

leave in cases under Rs. 100; but Mr. Millett himself shows that he has made a rule never to give leave to sue defendants long distances off for small sums of money.

6. I do not think that there is anything in the judgment in the case of Wallis v. Taylor to justify Mr. Millett in framing such a rule. All that Mr. Justice Pigot said was: 'We think it desirable to add that the discretion of the Small Cause Courts in giving leave to sue under Section 18 of Act XV of 1882 is one that ought to be only very cautiously exercised in eases such as the one before us.' These expressions suggest no such rule as that which Mr. Millett has framed for himself. All that Mr. Justice Pigot seems to have meant by those observations is to repeat what was said by Mr. Justice Wilson in his judgment in the same case, where he says: 'I wish to add that, in my judgment, when an application is made for leave to sue a military officer or other person compelled by his duty to be in a distant place, the discretion entrusted to the Court ought to be exercised with great care and discrimination' (1). In the case of Wallis v. Taylor the defendant was an officer doing duty with his regiment at Quetta. I was one of the Judges who sat with Mr. Justice Pigot in the trial of that case, and

7. I certainly understood his judgment to be simply repeating the warning which was given by Mr. Justice Wilson. If Mr. Millett had had the opportunity of seeing Mr. Justice Wilson's judgment he would probably have taken a different view of Mr. Justice Pigot's observations.

8. I think that where, in a case of this kind, discretion is given to a Court, it is necessary that the Court should look into the circumstances of each case and should not frame for itself any rules. If a hard rule is to be made, it is for the Legislature to make it and not for the Court. The fact that the Legislature has not made any rule shows that no general rule is to be made. The Court should look into each case by itself, take the circumstances of such case into consideration, and see that the section is not made a means of oppression.

9. The inappropriateness of the rule which Mr. Millett seems to have framed for himself is, I think, apparent. One of the objects of the existence of the Small Cause Court is to collect small debts for Calcutta tradesmen; yet according to Mr. Millett's

rule the smallness of the debt is a reason for excluding the jurisdiction where the defendant lives afar off. Apart from the inconvenience which a tradesman must undergo in having to follow his debtor to a distant place, the costs which he must necessarily incur in doing so, and which are irrecoverable even in case of success, will frequently far exceed the amount of the debt. Thus there would be a denial of justice even in cases where the whole cause of action arose in Calcutta, and the defendant was, at the time he purchased the goods, residing in Calcutta.

10. I should have thought-I do not put it as a proposition of law, but as a principle of fairness and as a circumstance to be taken into consideration by a Judge in exercising his discretion-that where goods are ordered of a Calcutta tradesman it is more reasonable that he should be allowed the use of a Calcutta tribunal than that he should be sent at great expense and inconvenience in pursuit of his debtor. Comparatively speaking the inconvenience to the debtor is small, and though there may be some inconvenience to a few alleged debtors who dispute the claims against them, this inconvenience is of trifling importance when compared with the evil of closing the doors of the Small Cause Court to Calcutta tradesman.

11. Before the passing of the present Act a tradesman who sought to recover a debt under Rs. 500, and whose debtor did not reside in Calcutta, could not proceed in the Small Cause Court, but, if the cause of action or a part thereof arose in Calcutta, he might sue in the High Court. Between the passing of the Act of 1864 and the passing of the present Act, The case of Wallis v. Taylor originally came before Garth, C.J., and Wilson, J., who disagreed and no final opinion was given, the case being then referred to a Bench of three Judges by whom the case was eventually decided. The above quotation is from the recorded opinion of Wilson, J., when the case came before himself and the late Chief Justice-ED. if the cause of action were in Calcutta, a creditor for over Rs. 500 and less than Rs. 1,000 could sue in the Small Cause Court; thus the creditor for the lesser debt was compelled to come to the higher and more expensive tribunal (compare Section 28 of Act IX of 1850 and Section 2 of Act XXVI of 1864). For, amongst other purposes, that of remedying this hardship the new Act was passed; yet Mr. Millett's rule entirely negatives this remedial effect) of the new Act.

12. I do not think that in this case Mr. Millett has exercised any discretion at all. He has simply applied to this case the rule that I have referred to, and has not considered the circumstances of this case.

13. I must set aside his order refusing leave to sue.

14. Under the circumstances I think it better that I should also, under the powers given to me by Section 622 of the Civil Procedure Code, give leave to sue in the Small Cause Court. I accordingly give such leave.