

In Re: Kailash Nath Roy

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Court : Kolkata

Decided On : Apr-10-1984

Reported in : AIR1984Cal384

Judge : G.N. Ray, J.

Acts : [Presidency Small Cause Courts Act, 1882](#) - Section 38

Appellant : In Re: Kailash Nath Roy

Advocate for Pet/Ap. : Ashok Banerjee, Adv.

Disposition : Application dismissed

Judgement :

ORDER

G.N. Ray, J.

1. This revisional application is directed against an order of the Full Bench of the Court of Small Causes, Calcutta under Section 38 of the Presidency Small Cause Courts Act refusing to entertain the application under Section 38 of the said Act. It appears that Suit No. 4506 of 1978 was contested by the parties, but after some hearing the learned Judge was of the view that he had no jurisdiction to entertain the said proceeding and the plaint was therefore directed to be returned. Against such direction for return of the plaint the said application under S. 38 of the

Presidency Small Cause Courts Act was made by the plaintiff petitioner.

The learned Full Bench of the Small Cause Court, Calcutta by the impugned order has held that the return of the plaint cannot be assailed under Section 38 of the Presidency Small Cause Courts Act and for the said purpose reliance was made on the decision of the Madras High Court made in Ganapathi v. Chunilal reported in : AIR1952 Mad594 . It has been contended by the petitioner in the instant revisional application that as the defendant had appeared in the said proceeding and had contested, the order for return of the plaint must be held to be an order passed on contest of the parties and as such Section 38 of the Presidency Small Cause Courts Act is attracted. In my view, the said contention cannot be accepted. Section 38 envisages a new trial of the adjudication made on merit of the issues involved on the lis presented before the Court. The return of the plaint cannot be held to be a decision on the lis involved in the suit. As such, the provisions of Section 38 of the Presidency Small Cause Courts Act is not attracted against an order for return of plaint and in my view the Full Bench has taken a correct decision. Accordingly, no interference is called for in this revisional application and the same is, therefore, rejected.

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