

**The State Vs. Krishnu Mal**

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**Court :** Himachal Pradesh

**Decided On :** Mar-25-1955

**Judge :** Ramabhadran, J.C.

**Acts :** [Code of Civil Procedure \(CPC\) , 1908](#) - Section 115 - Order 41, Rules 23, 25 and 27

**Appeal No. :** Civil Revn. No. 57 of 1954

**Appellant :** The State

**Respondent :** Krishnu Mal

**Advocate for Def. :** H.C. Anand, Adv.

**Advocate for Pet/Ap. :** N.D. Gupta and; D.R. Auluwalia, Adv.

**Disposition :** Petition allowed

**Judgement :**

ORDER

Ramabhadran, J.C.

1. This was originally admitted as a second appeal, but, for reasons stated in this Court's order.dated 21-12-1954, it was held that no second appeal lies in this case. At the request of the learned counsel for the appellant, however, the memorandum of appeal was treated as a revision petition. This revision petition

was admitted on the point that the learned District Judge has created an impossible situation by giving findings on issues 1 and 2 and remanding the case for decision on the remaining issues.

2. The facts giving rise to this revision petition are that one Krishnu Mal filed a suit against the former State of Bilaspur for recovery of a sum of Rs. 3,997/2/- by way of damages for alleged breach of contract. His case was that he had purchased the arms and ammunition contract for Bhakra for a period of 15 months from the 1st of Poll 2004 B. for a sum of Rs. 3,700/-. The plaintiff paid a sum of Rs. 925/- at the time of auction and the balance was to be paid in three instalments. The plaintiff alleged 'that Government failed to perform its part of the contract and, therefore, was not entitled to realize the balance of Rs. 2,775/-. He also claimed a refund of the first instalment of Rs. 925/-. The suit was resisted by the Government on various grounds. The Subordinate Judge held that the plaintiff was not entitled to the refund of Rs. 925/-. He held, at the same time, that the defendant was also not entitled to recover the balance of Rs. 2,775/- by attachment and, accordingly, directed that the attached property be released.

3. Both parties went up in appeal to the learned District Judge, the plaintiff claiming that the suit should have been 'decreed in toto', while the defendant contended that the suit should have been 'dismissed in toto': He came to the conclusion that the defendant had failed to perform its part of the contract and, therefore, the contract came to an end. He further held that the plaintiff was entitled to the refund of Rs. 925/-.

4. Having come so far, the learned District Judge then passed the following curious order:

'No decision has been arrived at by the learned Sub Judge under issues 3, 4 and 6. That being the case, the fate of the suit cannot be decided at this stage.

Issues 1 and 2 having been decided for the plaintiff, the cross-objections put forward by the defendant-respondent are rejected. The appeal is accepted with costs. Since certain issues have been left undecided, therefore, the case is remanded back to the lower Court under Order 41, Rule 23, C. P. C. for trial and

decision on the said issues.'

5. As learned counsel for the petitioner rightly pointed out, an impossible situation has been created by the District Judge. Having decided certain issues in favour of the plaintiff, the District Judge, instead of proceeding, either under Order 41, Rule 25 or Rule. 27, remanded the entire case, purporting to act under Order 41, Rule 23, C. P. C., which, as pointed out by me in my order of 21-12-1954, has no relevancy to the facts of the present case. In the second place, the District Judge rejected the cross-objections, while remanding the appeal, and thereby created a highly anomalous position. The result of this particular direction was that the decree passed by the trial Court became final as far as the defendant was concerned. But At was set aside and the matter was to be re-investigated in some respects as far as the plaintiff was concerned. The proper course for the District Judge would have been, had he considered such a course necessary, to remit one or more issues to the trial Court for determination and report under Order 41, Rule 25 and on receipt of that report and hearing objections, if any, thereto by the parties, to dispose of the appeal and the cross-objections together. As was pointed out by me in -- 'Sher Singha v Ram Kishen'; Civil Revn. No. 13 of 1953, D/-23-12-1954 (AIR 1955 NUC (Him. P.) 1426 (A)), a remand order passed by the District Judge must conform to law: As was observed by Broomfield J., in--'Purshottam Dattatraya v. Yeshvadabai Jay-deo', AIR 1935 Bom 216 (B): 'The Court has an inherent power to remand a case even where Rule. 23 does not apply, provided that the interests of justice require it. But it has no inherent power to disregard a method of procedure enjoined or provided by the Code and adopt a different one, unless it really is necessary in the interest of justice. Hence, where the lower appellate Court purports to remand a case under its inherent power, in a case covered by one of the rules of the Code; it is a material irregularity in the exercise of its jurisdiction by the lower appellate Court, which the High Court can cure by interfering in revision.'

6. Since several remand orders of this description from Bilaspur have come to my notice, I am driven to the conclusion that the learned District Judge had some sort of aversion to proceeding under Order 41, Rule 25 or 27, C. P. C., although those provisions have been specifically enacted to meet situations of this kind. I am

constrained to remark that a wholesale remand appears to have been almost an obsession with the learned District Judge.

7. There remains the question as to what order should be passed by this Court. Learned counsel for the petitioner prayed that the order of remand be set aside and the present District Judge be directed to rehear the appeal and if he considers such a course necessary, to call for a report under Order 41, Rule 25. Learned counsel for the respondent pointed out that the prayer originally made to this Court in the memorandum of appeal was merely that the order of remand be set aside. It was, therefore, suggested that, no prayer having been made to this Court that the order dismissing the cross-objections be set aside, that matter has become final.

8. The obvious answer to this contention is that this Court is seised of the matter in the exercise of its revisional jurisdiction. The District Judge has created an impossible situation by rejecting the cross-objections, while remanding the appeal under a Rule which has no application. The powers of this Court, to remedy such flagrant errors, in the exercise of its revisional jurisdiction, are unfettered. It can proceed even 'suo motu' in the interest of justice.

9. In the result: I allow this revision petition set aside the order of the District Judge, Bilaspur, Sri J. P. Thakore, dated 5-8-1952 in appeal 20/13 of 1952, whereby he purported to remand the case to the trial Court under Order 41, Rule 23, C. P. C., and, at the same time, to reject the cross-objections, i.e. both the orders, namely, the order remanding the case, as well as the order rejecting the cross-objections, are set aside. The present District Judge or the Additional District Judge will please rehear the appeal as well as the cross-objections and dispose of them in accordance with law. In case either of them feels that the trial Court has omitted to frame or try any issue or determine any material question of fact, it would be open to him to proceed under Order 41, Rule 25 or Rule 27, C. P. C. I shall be glad if the hearing of the case is expedited. In the circumstances of the case, there is no order regarding costs of this petition.