

(1917) 04 AHC CK 0011**Allahabad High Court****Case No:** None

Lalta Prasad and Another

APPELLANT

Vs

Ram Sarup

RESPONDENT

Date of Decision: April 23, 1917**Citation:** AIR 1917 All 152 : 40 Ind. Cas. 505**Hon'ble Judges:** Tudball, J; Rafique, J**Bench:** Division Bench**Final Decision:** Dismissed**Judgement**

1. This application in revision raises a question of jurisdiction. The facts, so far as we are concerned with them, may be briefly put as follows:-The plaintiffs are residents of Bareilly. The defendants are commission agents who do business in Bombay. The plaintiffs' case is that the defendants came to Bareilly, there made a contract as commission agents for the sale and purchase of cotton and grain etc., under what is known as the pukka arhat system and they agreed to render accounts at Bareilly and. to make all payments of amounts remaining due after rendition of accounts at Bareilly. Among other defences the defendants pleaded that the Bareilly Court had no jurisdiction, they alleged that the contract was made at Bombay, that the account was to be rendered at Bombay and that it had been agreed that any amount due thereunder was payable at Bombay. Neither party gave any evidence on the question. This point of jurisdiction was treated as a preliminary point. The plaintiffs' Pleader said that he wished to give no evidence. The Court of first instance held that in the circumstances the Bareilly Court had no jurisdiction and returned the plaint for the presentation to the proper Court. The plaintiffs appealed, As the judgment of the Court below shows, the learned Pleader, for plaintiffs entirely waived two grounds on which one plaintiff had pleaded that the Bareilly Court had jurisdiction. The first, was that the contract was made at Bareilly and the second, was that the parties had specifically agreed to make payments of money at Bareilly. But the point was pressed on two grounds (1) that according to the custom of the trade under the

pukka arhat system the Bareilly Court had jurisdiction to try the suit and (2) that according to the contract between the parties the defendants had agreed to render accounts at Bareilly. On neither question (of custom and of contract) did the plaintiff produce any evidence. The case was argued out and the arguments were finished, and when they were over, a petition was filed in the lower Appellate Court asking that Court to give plaintiffs an opportunity producing evidence on both the points. The Court declined to do that after the case had been completed. It agreed with the decision of the first Court and dismissed the appeal. So far as the record stands, it is quite clear that the decision on the question of jurisdiction depended upon certain facts i.e., the terms of the contract between the parties and the custom of the pukka arhat system. In the absence of evidence on these points the Court below was bound in the circumstances to decide against the plaintiffs. We are asked on their behalf to allow them an opportunity of producing evidence to prove that the Court at Bareilly had jurisdiction to try the suit. The opposite party has been put to a considerable expense already and has been dragged into two Courts and up to this Court by reason of what may be called an over-weaning confidence of the plaintiff's learned Pleaders in the Courts below in their knowledge of law. It is quite clear that the Court in Bombay has jurisdiction. As the record stands, it is not shown that the Bareilly Court has jurisdiction and we can see no benefit to arise in allowing a further waste of time and money in going into the points. We, therefore, must decline to send back the case as the decision of the Court below is quite correct. We, therefore, dismiss the application with costs including fees on the higher scale.