

## Abdul Hamid Vs Illrd Addl. District Judge, Mainpuri and another

**Court:** Allahabad High Court

**Date of Decision:** Aug. 30, 1999

**Acts Referred:** Provincial Small Cause Courts Act, 1887 " Article 4, 15(1)  
Uttar Pradesh Civil Laws (Amendment) Act, 1972 " Section 102, 9

**Citation:** (2000) 1 AWC 276

**Hon'ble Judges:** B. Dikshit, J

**Bench:** Single Bench

**Advocate:** S.K. Mehrotra, for the Appellant; Pradeep Kumar, S.C., for the Respondent

**Final Decision:** Dismissed

### Judgement

B. Dikshit, J.

The question, which arises for consideration in this writ petition, is whether the jurisdiction of civil court is barred to try a suit

which is of small cause court nature and the decree. If passed by civil court in such a suit, will be null and void?

2. The facts giving rise to said question are that respondent Beni Ram Agarwal (hereinafter referred as "Plaintiff") filed Original Suit No 420 of

1985 for possession before Munsif, Shikohabad against petitioner-defendant Abdul Hamid (hereinafter referred as "Defendant") after determining

the tenancy in respect of premises in dispute. After considering the case of the parties. Munsif, Shikohabad on 11.11.1987 decreed the suit.

Aggrieved by decree of trial court, the defendant filed an appeal. During pendency of appeal, an application was moved on 2.5.1989 by defendant

to amend his written statement. The plea, which was sought to be introduced by proposed amendment of written statement, is that as suit was

cognisable by small cause court, the jurisdiction of civil court was barred. The plaintiff objected to proposed amendment and appellate court by

impugned order dated 4.11.1989 rejected the amendment application. The amendment application has been rejected mainly on three grounds ; (1)

The jurisdiction of civil court is not ousted u/s 15(1) of Provincial Small Causes Courts Act. (2) The plea of jurisdiction was not raised before the

trial court and, therefore, it cannot be raised before this Court for the first time. (3) It is a bogus plea, which is not relevant to adjudicate upon the

controversy but has been raised to delay the disposal of the case. Aggrieved by order passed by appellate court, the defendant has filed this

petition.

3. The learned counsel for petitioner has reiterated his stand which was taken up before the appellate court and argued that as there was inherent

lack of jurisdiction with trial court, the decree passed by trial court is a nullity.

4. To answer the question, it is necessary to consider the relevant provisions of Provincial Small Causes Courts Act, the effect of amendment of

Article (4) of Schedule II of said Act and the relevant case law. Section 15(1) of Provincial Small Causes Courts Act and old and new Article (4)

of Schedule II of the Provincial Small Causes Courts Act are as follows :

15. Cognizance of suits by Courts of Small Causes.--(1) A Court of Small Causes shall not take cognizance of the suits specified in the second

schedule as suits excepted from the cognizance of a Court of Small Causes.

Old Article (4) of New Article (4) of

Schedule II Schedule II

A suit for Possession of a suit for the Possession of

Immovable property or immovable property or for

for the recovery of an the recovery of an interest

interest in such property." in such property, but not

including a suit by a lessor

for the eviction of a lessee

from a building after t h e

determination of his lease,

and for the recovery from

him of for the use and that

building after such

Explanation. "Building" For the

purposes of this Article,

the "building" means a

residential or non -

residential roofed

structure, and includes any

land (including any

garden). garages, out

houses. appurtenant to

such building, and also includes any fittings and fixtures affixed to the building for the more beneficial enjoyment thereof.

5. Section 15(1) of the Act came up for consideration before a Full Bench of this Court in the case of Manzurul Haq v. Hakim Mohsin Ali AIR

1970 AH 604, in which this Court held that the Court of Small Causes is not a Court of exclusive Jurisdiction, but it is a Court of preferential

jurisdiction. This legal proposition has been approved by Apex Court in the case of Smt. Gangabai Gilda Vs. Smt. Chhabubai Gandhi,

6. In the case of B. P. Gautam v. R. K. Agarwal AIR 1977 AU 103, a Full Bench of this Court, while dealing with a case where the decree was

passed by civil court in a suit after enforcement of U. P. Civil Laws Amendment Act, 1972, which provided though u/s 9 that all pending cases

triable by Small Causes Court were to be transferred from civil court to Small Causes Court after enforcement of amending Act, this Court held

that the decree passed is valid and not void. The Court held :

It cannot be gainsaid that the present suit became small causes in nature after the coming into force of the Civil Laws Amendment Act, 1972. It is

true that u/s 9 of the Amending Act such suit was triable by the Small Causes Court and was liable to be transferred to it from the regular side, but

nonetheless it continued to retain its nature, namely, small causes. In that event Section 102 which applies to suits of the nature of small causes but

which are tried on the regular side, is fully applicable. Under it no second appeal lies.

The Court further held :

We find that the defendant appellant did not inform the trial court that it has lost jurisdiction to continue to try the suit because of the coming into

force of Section 9 of the Civil Laws Amendment Act, 1972, otherwise the trial court would have immediately transferred the case to the relevant

Small Causes Court. There is no evidence to show that the defendant was not aware of the coming into force of the Amending Act. Under the

circumstances the position is that the defendant voluntarily had a trial on the merits before a regular Court. The procedure before a regular court is

more detailed. Further, the defendant has had another innings on the merits before the lower appellate court. Under the circumstances we do not

think that this is a fit case where the prayer for conversion of the appeal into a revision should be sustained.

7. In the case of Lala Hari Shyam v. Mangal Prasad AIR 1983 All 275, this Court relying upon Manzurul Haq v. Hakim Mohsin Ali (supra) held :

Construing Sections 15 and 16 of the Provincial Small Cause Courts Act a Full Bench of our Court in Manzurul Haq and Another Vs. Hakim

Mohsin Ali, , held that the Courts of Small Causes are Courts of preferential, and not exclusive, jurisdiction. This decision has been approved by

the Supreme Court in Smt. Gangabai Gilda Vs. Smt. Chhabubai Gandhi, . The necessary corollary is that the regular civil courts do not totally lose

Jurisdiction.

The Court also relied upon a decision of Full Bench in Bisheshwar Prasad Gautam Vs. Dr. R.K. Agarwal, and observed as follows :

A five-Judge Full Bench Bisheshwar Prasad Gautam v. Dr. R. K, Agarwal AIR 1977 AU 103 of our Court has held that even where a suit was,

in ignorance of this provision not transferred, even though recording of evidence had not begun before the relevant date, the decree will not be a

nullity. In such a case the suit which should have been tried as a small cause was tried as a long cause ; there is no defect of jurisdiction.

8. Counsel for defendant-petitioner has relied on Section 15 and the case of Arjun Lal Vs. 3rd Addl. District Judge and Others, to show that Small

Causes Courts is a Court of exclusive Jurisdiction. The case in no way helps him. It is distinguishable. In this case, it has been held that the suit of

eviction between landlord and tenant is cognizable by Small Causes Courts. It does not lay down that there is inherent lack of jurisdiction in civil

courts if it proceeds to try a suit of small cause nature.

9. Small legal proposition has been laid down by a Division Bench of this Court in the case of J. B. Pancholi v. Sri Sridharjee 1984 (1) ARC 336,

wherein it has been held that though the suit for possession is cognizable by Small Causes Courts. It did not lay down that civil court lacks inherent

jurisdiction.

10. The cases cited by learned counsel do not obviate the proposition of law that the Small Causes Court is a Court of preferential jurisdiction.

They only lay down that a suit for possession of immovable properties between lessor and lessee lies before the civil court.

11. The learned counsel for petitioner has also relied on a single Judge decision of this Court in Second Appeal No. 1237 of 1988 Rahmatullah v.

Mohd. Sharif and others of district Aligarh decided on 19.12.1996, wherein this Court held as under:

In this respect it will also be useful to examine the argument of the learned counsel in the light of Section 9 of the U. P. Civil Laws Amendment

Act, 1972. Section 9 provides for the transfer of pending suits from regular civil court to the Court of Small Causes, which have become

maintainable by virtue of the amendment brought about by U. P. Act No. 37 of 1972. Section 9 of the Amendment Act, read with Section 15 of

U.P. P.S.C. Act and item 4 of the Second Schedule clearly make out a case against the appellant which, if read together, clearly demonstrates that

the cognizance of suit, which was filed by the appellant could not be taken by regular civil court but by Small Causes Court. It is, therefore, not

correct for the learned counsel to contend that the Small Causes Court has been given preferential Jurisdiction and not original Jurisdiction. The

contention is wholly misconceived which is accordingly turned down.

This case has been decided against Full Bench decision of Bisheshwar Prasad Gautam Vs. Dr. R.K. Agarwal, and does not help the petitioner.

12. Thus, in the circumstances, it is held that the Small Causes Courts are Courts of preferential jurisdiction and not exclusive Jurisdiction and as

Section 15(1) of the Provincial Small Causes Court Act confers jurisdiction upon Small Causes Courts to try a suit for possession based on

contract of tenancy of a building, it enables the Small Causes Courts to take cognizance of a suit between lessor and lessee, but it did not exclude

the Jurisdiction of civil court to try the case as a regular civil suit and, therefore, a decree passed by civil court in a suit of small causes court nature

will be valid and not a nullity.

13. Before parting with the case. It is also necessary to dispose of an objection taken by counsel for plaintiff in respect of plea being raised in

appeal. The objection of learned counsel is that the plea of jurisdiction sought to be raised at appellate stage cannot be allowed to be raised. The

petitioner's main plea is about inherent lack of jurisdiction. The objection of inherent lack of Jurisdiction can be raised at appellate stage even if it

was not pleaded before Court below earlier. The petitioner is entitled to raise it even when he did not seek amendment of his written statement.

The law permits raising of plea of inherent lack of jurisdiction at any stage of trial and if it is raised before execution court where if it transpires that

the Court passing decree lacked inherent jurisdiction, then such decree cannot be executed. A decree passed by Court which lacks inherent

Jurisdiction is void. Thus, the objection of learned counsel for plaintiff that plea could not be raised in appeal is untenable.

14. However, as it has been held above that decree passed on regular side will not be a nullity and, therefore, the amendment, even if it is allowed,

is not going to serve any useful purpose and, therefore, defendant petitioner will not be getting any benefit, no relief in respect of allowing the

amendment sought can be given to petitioner.

15. For aforesaid reasons the writ petition fails and is dismissed. Interim order is vacated.