

(2004) 09 CAL CK 0051

Calcutta High Court

Case No: C.O. No"s. 200 and 201 of 1999

Paresh Nath Bakshi and Another

APPELLANT

Vs

S.N. Bhattacharya and Others

RESPONDENT

Date of Decision: Sept. 10, 2004

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Section 151, 152, 153
- Presidency Small Cause Courts Act, 1882 - Section 19, 36, 38

Citation: (2005) 2 BC 277 : (2005) 1 CALLT 38 : (2004) 2 ILR (Cal) 571

Hon'ble Judges: Arun Kumar Bhattacharya, J

Bench: Single Bench

Advocate: Udayan Chakraborty, Sangukta Bhattacharya and Molly Saha, for the Appellant; D. Roy, Hansa Ara Begum and B. Sinha, for the Respondent

Final Decision: Dismissed

Judgement

A.K. Bhattacharya, J.

The hearing stems from two applications filed by the petitioners praying for revision of the judgment and orders dated 19.09.1998 & 21.02.1998 respectively passed by the Full Bench of the Court of Small Causes of Calcutta in Suit Nos. 618/1992 & 380/1993.

2. The circumstances leading to the above applications are that in view of requisition orders of Respondent No. 3, Respondent No. 4 took possession of the petitioners' premises and the monthly compensation in respect of one requisitioned portion was accepted by the petitioners. Due to default and delayed payment of such compensation, the petitioners instituted six suits for recovery of interest and obtained decree. Against the judgment and decree of the first suit only being 3892/84 which was contested, Respondents 3 & 4 made an application u/s 38 of the Presidency Small Causes Act, 1882 for "new trial" of the suit, and the Full Bench upheld the decision of the trial Court on 06.04.1988. The decretal dues were

recovered through execution proceedings. But the learned Registrar suo motu raising the question of Court's jurisdiction declared the decree passed in Suit No. 618/1992 a nullity vide order dated 08.10.1993 which was affirmed by the Full Bench on 19.09.1998.

3. Though the next suit being 380/1993 was held to be maintainable on jurisdiction point, it was illegally dismissed ex parte on merits by the learned Registrar vide order dated 30.04.1994 and the petitioners' application u/s 38 read with Section 36 of the Presidency Small Causes Courts Act and Section 151 CP Code before the Full Bench for "new trial" was dismissed on 21.02.1998 followed by dismissal of the petitioners' application under Sections 151, 152 and/or 153 CP Code for rectification of the apparent errors or omissions and for reconsideration of the earlier order, vide order dated 19.09.1998.

4. Being aggrieved by and dissatisfied with the said orders, the petitioners have preferred the above revision.

5. All that now requires to be considered is whether the learned Court below was justified in passing the said orders.

6. Two questions involved in the present revision are : (1) whether a decree in Suit No. 618/1992 is void on the ground of jurisdiction and (2) whether the provisions of Section 38 of the Presidency Small Causes Courts Act, 1882 applies to the suit being No. 380/1993 which was dismissed ex parte.

7. Mr. Udayan Chakraborty, learned counsel for the petitioners, on drawing Court's attention to the order dated 06.04.1988 passed by the Full Bench of the Small Causes Court, Calcutta in Suit No. 3892/1984 and on referring the decisions reported in [Vishnu Sugar Mills Ltd. Vs. I.S.P. Trading Co.](#), AIR 1945 132 (Privy Council), [Avtar Singh and Others Vs. Jagjit Singh and Another](#), etc. advanced argument contending that the said suit 618/1992 being one for recovery of interest for delayed payment, it is not hit by Section 19(b) of the Presidency Small Causes Court Act hereinafter referred to as the said Act and when the earlier Full Bench held the existence of jurisdiction to entertain such a suit, the subsequent decision of the learned Registrar of Full Bench should be held to be barred by the principle of res judicata.

8. The petitioners instituted the said suit 618/1992 against the State of West Bengal being represented by Secretary, L. & L.R., Department, Government of West Bengal and First L.A. Collector, Calcutta for recovery of interest. Section 19 of the said Act excludes the jurisdiction of the Small Causes Court of certain suits, one of which, as mentioned in Clause (b), is suits concerning any act done by or by orders of the Central Government or the State Government. The expression "any act done cannot be narrowly interpreted. It embraces all and every kind of act unless there is anything to show to the contrary. Therefore, delayed payment of compensation by Respondents 3 & 4 giving rise to the claim of interest by the petitioners is also an act of the State. Accordingly, in my view, the Small Causes Court of Calcutta cannot be

said to have jurisdiction to entertain such a suit. The established rule that executing Court cannot go behind the decree is subject to certain well-defined exceptions. It is a fundamental principle well-established that a decree by a Court without jurisdiction is a nullity and that its invalidity could be set up whether and wherever it is sought to be enforced or relied upon, even at the stage of execution and even in collateral proceedings [Kiran Singh and Others Vs. Chaman Paswan and Others, .](#) Objection to the competence of a Court goes to the very root of the jurisdiction and raises a question of inherent lack of jurisdiction [Seth Hiralal Patni Vs. Sri Kali Nath, .](#)

9. Decision of a Court without jurisdiction is not covered under the principle of res judicata. In other words, any finding in a suit which was held not to be competent does not operate as res judicata. In this connection, the decisions reported in AIR 1922 PC 214 and [P. Dasa Muni Reddy Vs. P. Appa Rao,](#) may be relied upon. The facts and circumstances being quite different, the decisions so referred to by the learned counsel for the petitioners have no manner of application in the present case. Accordingly, the above contention of Mr. Chakraborty is not at all sustainable.

10. Mr. Chakraborty on referring the decisions in 1980(1) CLJ 9, [Sm. Annapurna Chatterjee Vs. Sm. Sabita Guha and Others,](#) & [Hindusthan Sugar Mills Vs. State of Rajasthan and Others,](#) next contended that on the facts and circumstances of the case, the learned Full Bench should have allowed his clients' application u/s 38 of the said Act particularly when it should not be the motto of any Government to defeat the legitimate claim of the citizen but to adopt a legalistic attitude to do what is fair and just. The provision of Section 38 of the said Act applies when a suit has been contested and not when the decree was made otherwise than by consent of or in default of appearance by the defendant as will be evident from the language of the section as also explanation thereof. Here, the decree was passed ex parte and the learned Registrar passed the order in an execution proceeding and not in a suit. Therefore, the requirement of the provision of Section 38 having not been fulfilled, there is no scope for application of the said provision of Section 38.

11. In the premises, there being no material to interfere with the impugned orders, the revisional applications be dismissed on contest but without any cost in the circumstances.

The impugned orders dated 21.02.1998 and 19.09.1998 passed by the learned Court below in suit Nos. 618/92 and 380/1993 are hereby affirmed.

Let a copy of this order be sent down at once to the learned Court below.