(1955) 06 CAL CK 0033

Calcutta High Court

Case No: Civil Revision Case No. 3525 of 1954

Lachminarain Lalchand		APPELLANT
	Vs	
Golabchand Dhanraj		RESPONDENT

Date of Decision: June 10, 1955

Acts Referred:

- Presidency Small Cause Courts Act, 1882 - Section 37, 38

Citation: (1957) 2 ILR (Cal) 841

Hon'ble Judges: Debabrata Mookerjee, J

Bench: Single Bench

Advocate: Bankim Chandra Dutt and Braten Banerjee, for the Appellant;A.K. Sen and Sushil Biswas, for the Respondent

Judgement

Debabrata Mookerjee, J.

This is an application for revision of an order of a Full Bench of the Calcutta Court of Small Causes dated June 29, 195-3, by which a suit brought by the Plaintiff opposite party was decreed in part. The Plaintiff opposite party instituted a suit against the Defendant Petitioner for realisation of Rs. 1,796-15-6 pies as the price of goods sold and delivered together with a sum of Rs. 103-0-6 pies as interest thereon at 12 per cent, per annum in the Calcutta Court of Small Causes. The price related to 32 pieces of "Krishna" coating of which 23 bundles were of the mark 150 with the specified width of 28/29 inches and the remaining 9 bundles of width of 27 inches. The Defendant failed and neglected to pay the price of the goods sold and delivered to him inspite of demands whereafter the present suit was instituted.

2. The Petitioner who was the Defendant in the court below contested the proceedings and filed a written statement. The case which the Defendant made before the trial Judge was that the transaction had taken place through one Bridhi Nahata, a broker, and he purchased from the Plaintiff 23 pieces of ''Krishna'' coating bearing mark 150 of the width of 28/29 inches and also 9 pieces of "Krishna''''

coating with the mark 150A of the width of 28/29 inches but in violation of the terms of the contract the Plaintiff had delivered to him 23 pieces marked 150 of the contracted width, that is to say, 28/29 inches but the 9 pieces marked 150A which had also been delivered by the Plaintiff were of short width, that is to say, 27 inches only in place of 28/29 inches as contracted for. In these circumstances, the Defendant averred that he had rejected the entire lot of 32 pieces and communicated this rejection to the Plaintiff.

3. The 3rd Bench of the Calcutta Court of Small Causes came to try this suit; and by an order, dated June 29, 1953, that court dismissed the Plaintiff''s suit on contest with cost. It was found inter alia that the contracted goods were not supplied and consequently, the Defendant was within his rights to refuse to accept the goods and pay for them.

4. Thereafter an application was made u/s 38 of the Presidency Small Cause Courts Act for a new trial. The application was admitted and it was finally heard and decided by a Bench of two Judges on August 3, 1954, by which the application was allowed on contest and the judgment and decree made by the trial Judge were set aside. The Plaintiff''s claim was, however, not decreed in full inasmuch as, according to the Full Bench, the Plaintiff had failed to establish the custom by which he could reasonably charge interest at 12 per cent, per annum or the contract by which he could legitimately claim that rate of interest. In the result, the Full Bench made a decree in the sum of Rs. 1,796-15-6 pies with proportionate costs. It is against this order made by the Full Bench decreeing the Plaintiff''s suit in part that the present Rule has been obtained by the Defendant.

5. Mr. Dutt appearing in support of the Defendant Petitioner has argued that in view of the provisions contained in Section 38 of the Presidency Small Cause Courts Act there could be no appeal from an order made by a Judge of that Court in the sense that questions of fact decided by the trial court could not be reviewed in an application for new trial. The provisions of Section 38 of the Act are as follows:

Where a suit has been contested, the Small Cause Court may, on the application of either party, made within eight days from the date of the decree or order in the suit (not being a decree passed u/s 522 of the Code of Civil Procedure, order a new trial to be held, or alter, set aside or reverse the decree or order, upon such terms as it thinks reasonable, and may, in the meantime, stay the proceedings.

6. In support of the contention raised above, Mr. Dutt has relied upon several decisions of this and of other High Courts. It is not necessary to review in detail the progress of the legislative trends which ultimately crystalised in Section 38, as we have it at the present moment.

7. The earliest decision on the point is Sadasook Gambir Chand v. Kannayya and Anr. ILR (1895) Mad. 96. That was a decision rendered presumably before the amendment to the Act made in 1895. In that case there was a difference of opinion

between two learned Judges and the matter was referred to the decision of Collins, C.J., who agreed with the opinion of Shephard, J., who had held that the forms that the interference of the Full Bench may take are not evidently those of interference on questions of fact; of the several modes of interference, the one that was allowed under the statute was purely upon a question of law. The effect of this decision was clearly to limit the powers of the court concerned to revision of orders made by the trial court on question of law.

8. This decision was followed in the case of Srinivasa Chaiiu v. Balaji Rau ILR (1896) Mad. 232, which was a decision rendered after the amendment had been made to the Act. The learned Judges considered the effect of the amendment and held that it had not the effect of enlarging the scope of Section 38 in the sense of giving any larger-powers to interfere with the decision of the trial Judge. The learned Judges held that the effect of the amendment was rather to restrict the powers given to the court under the corresponding section of the earlier Act. It may be mentioned in passing that Chapter VI was headed in the old Act as "new trials and "rehearing"; the amendment made it "new trials and appeals", but even then, according to the learned Judges, the amendment did not have the effect of enlarging the powers of the court so as to enable findings of fact reached by the trial court to be disturbed. This view was adhered to in a later case, Sai Sikandar Rouchter v. Ghouse Moladin Marakayar ILR (1916) Mad. 55. (F.B.). It was a Full Bench decision and Wallis, C.J., who delivered the leading judgment held that there was no ground for the contention that by the amendment the legislative intended to enable the court to entertain appeals on questions of fact dealt with and disposed of by the trial Judge. The earlier decisions of the Madras Court were, in fact, re-affirmed in this Full Bench decision.

9. This Court held in the case of E.D. Sasoon and Ors. v. Hurry Das Bhukat ILR (1896) Cal. 455, that where the question was one of evidence, the judgment of the original court could be reversed and a new trial granted only when such judgment was manifestly against, the weight of evidence. Sale. J. held in this case on reference to Section 37 of the Act which declared the general finality and conclusive character of decrees and orders of the Small Causes. Court that the judgment of the original court could be reversed and a new trial directed only when such judgment was manifestly against the weight of evidence in the case. In the case of John Smidt v. Ram Prasad ILR (1911) Cal. 425, Harington, J. approvingly referred to the judgment of Sale, J. in the case of E.D. Sassoon v. Hurry Das Bhukut (supra) and rules that a new trial might be ordered only when the judgment of the trial court was manifestly against the weight of evidence.

10. If re-affirmation of this view of the law was necessary, it is to be found in a later decision of this Court in the case of Baldeo Das Lohia v. Messrs. Balmukund Brijmohan (1929) (1911) 34 C.W.N. 413, where Lort-Williams. J. referred to the Madras cases and the later Calcutta decisions to which I have just called attention and held on the analogy of the corresponding rule of English law that Section 38

merely meant that a decision of the trial Judge could be interfered with only it it was against the weight of evidence. A decision being against the weight of evidence means that the decision was such that it could not have been rendered by any reasonable person or it means a judgment to which no reasonable persons ought to have come. It, therefore, follows that if it is possible to take two views of the evidence that has been led in the case, it is not open to the court u/s 38 to differ from the view taken by the trial Judge. It must, therefore, be established that the view of the evidence taken by the trial Judge is one which could not possibly with any reason have been taken. Both on authority and in principle this seems to be the per-requisite for the exercise of power given by Section 38 of the Act.

11. In this state of the law it is to be seen whether the findings arrived at by the learned trial Judge are such as could reasonably have been taken by a court dealing with facts and circumstances duly proved before it. In the present case the findings of the trial Judge are based solely on a consideration of the oral evidence adduced by the Defendant in the case. No attempt was made to collate that evidence and analyse it against the background of the case made by the Defendant in his written statement. If the evidence given by the Defendant is studied against his own pleadings, the court is faced with one of two alternatives. It will have either to accept the case made in the evidence or take the case as made in the pleadings. The trial Judge completely ignored the pleadings and no attempt was made to subject the oral evidence to scrutiny against the back-ground of the considered case set out in the written statement. While adverting to this matter in a rather casual way the trial Judge observed thus:

The Defendants admitted that both the numbers were ordered for in their written statement, but in the Court they mentioned No. 150 only which is also the evidence of the broker. But be that as it may, whether 150 or 150 and 150A numbers were ordered for, the fact remains that the Defendants rejected the goods, because of the shortness of width. That is the case from the beginning to end.

12. This finding really takes no note of the divergence between the case made in court and the one made in the written statement. Rather the issue of disparity was attempted to be avoided by the trial court which then referred to what it considered to be ample evidence of rejection of the goods by the Defendants and in that view held that the Plaintiff could not be heard to complain of non-payment of price of the goods delivered. As far as I can see, the evidence in the case adduced by the Defendant goes one way and the written statement to which I have called attention goes a different way, and no attempt is made by the trial Judge to reconcile the two. If the Judge bad, upon a consideration of this disparity, come to a definite conclusion upon the evidence and the pleadings, it would have been extremely difficult for this Court to told that the Full Bench was within their rights in interfering with an order thus made. But as I have indicated, the trial court never addressed itself to issues of fact of vital importance in the case and that being so, I am bound

to hold that upon the evidence and the pleadings such as they are, the trial Judge could not reasonably have arrived at the conclusion at which he did. It is not merely a question of credibility or even of sufficiency of evidence. The question is really one of "weight "of evidence-'' as explained in the decisions cited above.

13. The Full Bench gave, in my view, proper consideration to all aspects of the questions which were material to the case not with a view to re-assess the evidence but really with a view to seeing whether upon the pleadings and the evidence, the trial Judge could reasonably come to the conclusion at which he arrived. The Full Bench has held, in effect, that the conclusion of the trial Judge that the contracted goods were not supplied was based upon no evidence at all and consequently in that view of the matter interfered with the decision of the trial court and decreed the Plaintiff''s suit.

14. In these circumstances, I think the Full Bench acted well within the limits of Section 38 of the Presidency Small Cause Courts Act and the order made by the Bench decreeing the Plaintiffs'' suit must accordingly be upheld.

15. The result is that Rule is discharged with costs.