
(1868) 04 CAL CK 0005

Calcutta High Court

Case No: None

Madan Mohan Bose

APPELLANT

Vs

Lawrence

RESPONDENT

Date of Decision: April 23, 1868

Judgement

Markby, J.

I am of opinion that this case does not fall u/s 9 of Act XXVI of 1864 (reads)¹. I do not think it can be said that when a plaintiff comes into this Court, for the express purpose of availing himself of a process of execution, which does not prevail in the Small Cause Court, the suit was one for which a summons might have been taken out from the Small Cause Court, u/s 9, and I doubt whether the words in Section 25² of Act IX of 1850, include a suit upon a judgment of the Small Cause Court. I, therefore, think that the plaintiffs are not absolutely deprived of their costs by Section 9, but under all the circumstances of this case, the plaintiffs having come here purely for their own convenience, and there being no reason for supposing any obstacle was thrown in the way of realizing the judgment by the debtor, I think I ought, in my discretion, to refuse costs. Decree for the plaintiffs for the sum of Rs. 659, and the costs of the suit in the Small Cause Court, and interest on the aggregate amount at 6 percent. No order as to costs.

¹Section 9 of Act XXVI of 1864. If any action, shall, after the passing of this Act be commenced in the High Court, for any cause other than those specified in Section 100 of Act IX of 1850, for which a summons might have been taken out from a Court held under the said Act IX of 1850, or under this Act, and in which such Court would have had jurisdiction, and if a verdict shall be found for the plaintiff for a sum less than one thousand rupees, if the said action is founded on contract, or less than three hundred rupees if it is founded on wrong, the plaintiff shall have judgment to recover such sum only and no costs, and if a verdict shall not be found for the plaintiff, the defendant shall be entitled to bit costs as between attorney and client, unless in either case the Judge who shall try the case, shall certify that, by reason of the difficulty, novelty, or general

importance of the case, or of some erroneous course of decisions in like cases in the Court of Small Causes, the action was fit to be brought in the High Court."

²Section 25 of Act IX of 1850--All suits where the debt or damage claimed, or value of the property in dispute, is not more than five hundred rupees, whether on balance of account or otherwise, may be brought in the Court of Small Causes."