(1869) 05 CAL CK 0048

Calcutta High Court

Case No: None

Isan Chandra Sing	APPELLANT
Vs	
Haran Sirdar and Others	RESPONDENT

Date of Decision: May 22, 1869

Judgement

Sir Barnes Peacock, Kt., C.J.

The first point upon which the Judge of the Small Cause Court asks the opinion of this Court is, whether in a case in which a judgment of a Small Cause Court in the Mofussil is called in question by one of the parties on a point of law, such as that damages have been assessed on a wrong principle, is it necessary for the party aggrieved to apply for a new trial, or can a motion be received to alter or reduce the amount of the judgment? It appears to me that a motion cannot be received to alter or reduce the amount of the judgment, and that it is necessary for the party who calls the judgment in question to apply for a new trial within the period allowed by the 21st section of Act XI of 1865. But upon granting a new trial, it is not necessary for the Judge to re-open the whole case and to retry it upon questions of fact which have been determined and are not disputed. It is competent for him to grant a new trial and lay down any issue or issues of law or of fact which he may think necessary with reference to the grounds upon which the judgment is impeached. If the judgment is called into question upon a point of law, such as that damages have been assessed on a wrong principle, and the facts found are not disputed, the Judge may grant a new trial as to what amount of damages were sustained; and in determining that question he may alter his opinion as to the principle on which damages ought to be assessed and upon the new trial assess them upon the proper principle.

2. The second question does not state clearly and concisely the point of law upon which the Judge asks the opinion of this Court. The Court is left to find out what the point of law is from the statement of the facts. As far as I can ascertain the point of law upon which the Judge wishes to be advised, it is this:--Whether a statement made by one of the parties to the suit and put in evidence must be taken and

believed in its entirety, or whether the Court having the whole statement before it, can according to law believe one part of the statement and disbelieve another part. If that is the question of law, I should answer it by observing that a man''s own statement is not evidence for him; though in certain cases it may be used as corroborative evidence. If one party uses the statement of another against him, the whole of the statement must be put in evidence, but the Judge is not bound to believe the whole of it. For instance he may, though he is not bound to do so, believe that part of the statement which makes against the interest of the person who makes it without believing all that part of it which makes in his favor.

3. The statement of the Judge on this point is this:-- "The plaintiff''s claim was for a certain balance remaining due, after crediting various sums paid to defendant. The latter averred the amount lent him to have been less than what plaintiff stated; he (the defendant) did not prove re-payments at all. I found the amount lent to have been considerably less than that stated in the plaint and in plaintiff''s books, and decreed the amount proved to have been lent, without deducting the sums with which defendant was credited in plaintiff''s books. Defendant contends that, as plaintiff has debited himself with these sums, his own books must be held conclusive evidence that he has received them.

4. If the question which the Judge intended to submit is, whether the plaintiff''s books were conclusive evidence of the payments of the sums for which he has given credit, I should answer that question of law in the negative. The Judge might believe the entries on the debit side of the account in the plaintiff''s books, if put in by the defendant to prove the sums credited, or if used by the plaintiff as corroborative evidence of the debts, but they were not in either case conclusive evidence, or evidence which the Judge was bound to believe. The Judge ought to form his own opinion on the whole evidence in the case as to whether the entries or any of them were true or false. If be believed that the entries of the payments were wholly fictitious, and inserted as a blind to lead the Court to believe that the accounts had been kept honestly and fairly, the Court could not be bound to believe that the payments entered had been made, however discreditable the Court might believe the conduct of the plaintiff was in making such entries for such a dishonest purpose. Id dealing with the question of evidence, the Court would not necessarily be bound to believe that the plaintiff had been guilty of such discreditable conduct.

5. The Judge goes on:-- "I considered it inequitable to reject plaintiff''s books where they made for him, viz., as to the amount lent to defendant, and to accept them where they were against his interest, viz., in the amount of re-payments credited to defendant; and as defendant had no other evidence of re-payment, I disregarded both descriptions of entries equally."

6. If the Judge upon the evidence really believed that the payments credited in the plaintiff''s books were made, although he disbelieved the entry as to the amount of the debits, and came to the conclusion that the debt was not so large as the plaintiff

had stated in his favor, there would have been nothing inequitable in giving the defendant the benefit of the payments which, from the evidence of the entries, the Judge believed to have been made, although they might be equal to the amount which the Judge on the evidence believed to have been actually lent, and thus have deprived the plaintiff of the right to recover anything. The justice and equity of the case, when the facts were ascertained, would be to award to the plaintiff the amount which he had lent after giving credit to the defendant for the amount which the Judge believed he had paid. All that we can say with reference to this in point of law, is that the Judge was bound to look at the whole of the entries which be found in the plaintiff''s books, to give credit to such of the entries as he believed to be true, and to discredit those, if any, which he believed to be false. In arriving at the conclusion of fact if the Judge had any doubt, he might have called the plaintiff as a witness, and pat him on his oath as to whether the entries of payment were false or not. Even if the plaintiff had sworn that they were false, the Judge was no more hound to believe his evidence on that point than the evidence of any other witness. We can only say that, in point of law, if the Judge from looking at the entries believed that the payments were made, he was bound in justice, equity, and good conscience to give the defendant the benefit of them, whatever the effect might be upon the plaintiff''s claim.

7. With this expression of our opinion on the point of law endeavouring to point out as clearly as we can the difference between points of law and questions of fact, the case mast be sent back to the Judge of the Small Cause Court.

8. It was contended by the vakeel, who has argued this case very well, that the Judge had no power to refer these questions of law for the opinion of the High Court; that they did not arise in any stage of the cause in which, as provided by Act XI of 1865, section 22 or Act X of 1867, the Judge could ask the opinion of this Court on a point of law.

9. Section 1 of Act X of 1867 says:-- "If at any point in the proceedings previous to the hearing of a suit under the said Act.....any question of law shall arise, the Court shall draw up a statement, and refer it to the High Court for its opinion."

10. It is said that an application made to the Judge, after a cause has been heard, was not a point in the proceedings previous to the hearing of the suit, inasmuch as the suit must have been previously heard. We must give a reasonable construction to this Act, and we must give it with reference to the powers of the Small Cause Court. The Small Cause Court has power to grant a new trial. If it had granted a new trial, there can be no doubt that the hearing on the new trial would have been a hearing within Act XI of 1865, section 22; and then the Judge might have asked our opinion on a point of law. If the hearing of a new trial would have been a hearing within the meaning of section 22 of the Act, the application for a new trial was a point in the proceedings previous to the hearing of the case. If we were to hold that an application for a new trial was not a point in the proceedings previous to a

hearing, unless the application should result on a hearing, we should compel the Judge to grant a new trial, in order that upon the hearing under it he might ask the opinion of the Court on a point of law, which, if he could have asked it on the application for a new trial, might have saved the necessity of granting it. It appears to me that that would be putting a very restricted meaning on the words of the Act and one which was never intended, if we were to hold that the Judge could not ask our opinion on a question of law upon an application for a new trial.