

cannot *à fortiori* make an application for the execution of a decree.

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RAGHUNA'TH  
2.  
CHIMNA'JI  
KESHAV  
DA'MILE.

PER CURIAM (NEWTON and TUCKER, JJ.):—Under the general Hindú law, the applicant, having attained the age of seventeen years, was competent to institute any legal proceedings for the purpose of enforcing his rights. Cl. 3, Sec. VII., Reg. V. of 1827 fixes a special period of limitation in cases of minority, and merely prescribes the age of eighteen years as the time at which the minor's disability is to cease. Except for this particular purpose, it does not alter the general law. We, therefore, reverse the order of the District Judge made on the 23rd of November 1867, and direct that he proceed with the further consideration of the opposite party's appeal. Costs of this application to be borne by Chimnáji Keshav.

*Referred Case.*

July 14.

JITMAL valad BAIHRAVDA'S ..... *Plaintiff*.  
RA'MCHANDRA valad JAGRUP *et al.* ..... *Defendants*.

*Small Cause Court—Order rejecting plaint—Power of set aside.*

*Held* that it is not competent to the Judge of a Small Cause Court in the Mofussil to set aside an order which he has made rejecting a plaint.

CASE referred for the decision of the High Court, under Sec. 22 of Act XI. of 1865, by Bháskar Dámodhar, Judge of the Small Cause Court at Ahmednagar.

“The abovenamed plaintiff presented his plaint on the 20th of March last, and it was set down for disposal on the 10th of April. It was, however, found on that day that the plaint did not clearly describe the cause of action. The plaint was, therefore, rejected, in accordance with Sec. 29 of the Code of Civil Procedure, the provisions of which have, by Sec. 47 of Act XI. of 1865, been extended to all suits and proceedings under that Act, so far as the same may be applicable.

“On the 16th of April, the plaintiff presented an application praying that the order rejecting the plaint might be

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set aside, and permission granted to amend the plaint. Notice of the application having been given to the defendants, they have appeared by *vakil*, and the plaintiff is also present.

“The first question which arises in connection with the plaintiff's application, is whether or not it is competent to this court to set aside its order rejecting the plaint. Sec. 21 of Act XI. of 1865 runs as follows:—

‘In suits tried under this Act, all decisions and orders of the Court shall be final: provided that in any case in which a decree shall be passed *ex parte* against a defendant, he may, within thirty days after any process for enforcing the decree has been executed, give notice to the Court by which the decree was passed, of his intention to apply to the Court at its next sitting for an order to set it aside: and if, on the application being made to the Court at its next sitting, it shall be proved to the satisfaction of the Court that the summons was not duly served, or that the defendant was prevented by any sufficient cause from appearing when the suit was heard, the Court shall pass an order setting aside the decree, and shall appoint a day for proceeding with the suit, upon such terms as to costs or otherwise as shall to the Court seem proper: provided also that it shall be competent to the Court, if it shall think fit, in any case not falling within the proviso last aforesaid, to grant a new trial, if notice of the intention to apply for the same at the next sitting of the Court be given to the Court within the period of seven days from the date of the decision, and if the same be applied for at the next sitting of the Court; but no such new trial shall be granted where the party applying for the same is the defendant, or one of the defendants, unless he shall, with his notice of application, deposit in Court the amount for which a decree shall have been passed against him, including the costs (if any) of the opposite party.

“Under the above-quoted section, all decisions and orders of this Court are final. It has, however, been provided that *ex parte* decrees may be set aside, on the application of the defendants, under certain circumstances; and that in other cases ‘a new trial’ may be granted, if notice of the intention to apply for the same be given to the Court within the period of seven days from the date of the ‘decision,’ and where the party applying for a new trial is the defendant, if he deposit in court, with his notice of application, ‘the amount for which a decree shall have been passed against him, including the costs (if any) of the opposite party.’ This provision does not seem to be applicable to orders other than decisions or decrees. In order, however, to remove all doubts on the subject, I beg to refer, for the decision

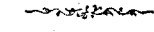
of the Honorable the High Court, the following question, namely :—

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“ Are all orders, not being decrees and decisions, issued under Act XI. of 1865, final, under Sec. 21 thereof; or can they be set aside under circumstances similar to those under which decrees and decisions can be set aside ?

“ I am of opinion that orders, not being decrees or decisions, issued under Act XI. of 1865, are final. If, however, the Honorable the Judges of the High Court rule otherwise, I shall dispose of the application, which has given rise to this reference, accordingly.”

PER CURIAM (COUCH, C.J., and NEWTON, J.):—The Court is of opinion that it is not competent to the Judge to set aside the order rejecting the plaint, and that this case cannot be brought within the power, which may be possessed by a Small Cause Court, to correct, on review, an evident error or omission.



*Referred Case.*

July 14-

RA'ICHAND MANGAL..... *Plaintiff.*  
ABDULLA' AMRUDDIN KOTVA'L..... *Defendant.*

*Small Cause Court—Military Code.*

*Held* that the rules and orders in the Military Code are not binding on a Small Cause Court.

CASE referred for the decision of the High Court, under Sec. 22 of Act XI. of 1865, by Gopákrávi Hari Deshmukh, Judge of the Small Cause Court at Ahmedábád.

Question—“ Whether or not, in a suit against a camp follower, the Civil Court, established by Act XI. of 1865, will be bound by the rules and orders in Jameson's Code of Military Regulations.”

“ The law to be followed by Civil Courts in adjudicating upon claims is described in Sec. 26 of Reg. IV. of 1827 :— ‘ The law to be observed in the trial of suits shall be Acts of Parliament and Regulations of Government applicable to