

APPELLATE CIVIL.

Before Sir Stanley Batchelor, Kt., Acting Chief Justice and Mr. Justice Shah.

1917.

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SONOO NARAYAN, APPLICANT *v.* DINKAR JAGANNATH MARATHE,
OPPONENT.*

*Presidency Small Cause Courts Act (XV of 1882), section 38—New trial—
Full Court—Difference of opinion on questions of fact—Powers of interference—
Powers not restricted to questions of law only—Jurisdiction.*

S and D filed cross suits in the Presidency Small Cause Court. The trial Judge allowed S's suit and dismissed that of D. D obtained a Rule for new trial and the same coming up for argument before the Chief Judge and the trial Judge, there was a difference of opinion between the learned Judges on questions of fact. In this division the order of the Chief Judge prevailed with the result that D's claim was wholly allowed and that of S disallowed. Against this order S applied in revision to the High Court contending that under section 38 of the Presidency Small Cause Courts Act, 1882, the Full Court had no jurisdiction to make the order because they had no appellate powers on a question of fact and upon such questions their powers of interference were limited to cases where the judgment of trial Court was manifestly against the weight of evidence,

Held, that the Full Court had jurisdiction as the powers conferred under section 38 of the Presidency Small Cause Courts Act, 1882, were not restricted to interference on questions of law only.

PER BATCHELOR, ACTING C.J. :—There is nothing in the wording of the section which suggests that the Legislature intended to confine the powers thus generally granted to particular cases where questions of law are involved, nor can it be accurately said that the powers of interference are only to be used where the original judgment is manifestly against the weight of the evidence.

CIVIL Application under extraordinary jurisdiction to set aside the decrees passed by the Chief Judge of the Court of Small Causes at Bombay in suits Nos. 7635 and 7753 of 1916.

The facts were as follows :—

The petitioner Sonoo Narayan filed a suit No. 7753 of 1916 in the Presidency Small Cause Court at Bombay

*Application No. 83 of 1917 under extraordinary jurisdiction.

against the opponent Dinkar Jagannath to recover Rs. 507 being the balance of a commission agency account in respect of goods purchased for the opponent and in the alternative for the balance of an account of goods sold and delivered to the opponent by the petitioner.

1917.

SONOO
NARAYAN
v.
DINKAR
JAGANNATH.

The opponent Dinkar also filed a suit No. 7635 of 1916 in the same Court against the petitioner to recover Rs. 225 being the amount due at the foot of an account of money lent and advanced from 6th January to 4th March 1916 against which the petitioner agreed to supply betel leaves.

Both the suits came on for hearing before the learned Fifth Judge who heard them together and tried as one suit. The opponent in his defences denied that any goods were purchased for him and denied several items of the account. The petitioner in his defence to the opponent's suit denied the items that were not in his (petitioner's) accounts.

Upon these defences the Court referred the accounts in dispute to Mr. Manchhashankar as Commissioner. The Commissioner made his report on the 26th August 1916. The arguments were heard on the report which was ultimately confirmed by the Court and a decree was passed allowing the petitioner's claim and dismissing that of the opponent.

Against this decree and order of dismissal in the two suits the opponent moved the Full Court. The Court granted a Rule *nisi* to show cause why a new trial should not be ordered. The Rule having come on for hearing before the Acting Chief Judge and the Fifth Judge the latter was of opinion that on the evidence as it stood, the opponent had not satisfactorily established his claim and, therefore, the Rule should be made absolute for new trial ; but the Chief Judge held that

1917.

SONOO
NARAYAN
v.
DINKAR
JAGANNATH.

the opponent's suit should be wholly allowed and the petitioner's suit should be disallowed. The Chief Judge's opinion having prevailed, he dismissed the petitioner's suit and passed a decree in the opponent's suit for Rs. 225 and costs against the petitioner.

The petitioner applied to the High Court.

Kanga with *S. B. Dadiburjor*, for the applicant:—
We submit two points arise for consideration in this application. First, there ought to have been a reference to the High Court under section 69 of the Presidency Small Cause Courts Act, 1882. The judgment of the learned Fifth Judge was given under section 37 of the Act. Then the matter was taken to the Full Court and it was heard under section 38. There was a difference of opinion between the learned Judges, the Chief Judge holding that on the evidence on record the opponent's suit should be wholly allowed and the petitioner's dismissed, while the Fifth Judge was of opinion that on the evidence as it stood, the opponent had not satisfactorily established his claim and that the Rule for a new trial should be made absolute on the ground that fresh evidence was desirable. This difference of opinion as regards sufficiency or insufficiency of evidence to dispose of the case would, we submit, be a question of law and, therefore, a reference was needed under section 69 of the Act.

Secondly, the Full Court sitting under section 38 of the Presidency Small Cause Courts Act, 1882, is not a Court with appellate powers and unless the judgment of the trial Judge is manifestly against evidence the Full Court should not interfere with the judgment of the trial Court: see *Behram v. Ardeshir*⁽¹⁾. The powers exercised by the Full Court are purely revisional

(1) (1903) 27 Bom. 563.

in their nature and the extent of the revisional jurisdiction is confined to questions of law only: *In re Shivlal Padma*⁽¹⁾.

[SHAH J.:—Section 38 of the Act is in the widest possible terms and all interference under this section is discretionary: see *Bapuji v. Dastur*⁽²⁾.]

The Madras High Court in a recent Full Bench decision in *Sai Sikandar Rowther v. Ghose Mohidin Marakayar*⁽³⁾ has taken a contrary view. There they lay down that under section 38 of the Act, the Full Court has no jurisdiction to decide questions of fact whether they are raised generally or in consequence of its finding on another question of fact or law. We submit this decision should be followed.

A. G. Desai, for the opponent, not called upon.

BATCHELOR, ACTING C. J.:—This is an application in the extraordinary jurisdiction made by one Sonoo Narayan. He and the opponent Dinkar Jagannath instituted cross suits in the Court of Small Causes, the petitioner's suit being to recover a sum of Rs 507, while the opponent's suit was to recover Rs. 225. A reference having been made to the pleader Mr. Manchashankar as a Commissioner, that gentleman made his report which was in favour of the present petitioner and against the opponent. That report was confirmed by the learned Fifth Judge, who was the Judge of trial, and an order was made accordingly. Thereafter a Rule for a new trial was obtained by the present opponent from the Full Court. On the Rule coming up for argument before the learned Chief Judge sitting with the Fifth Judge as a Full Court, there was a difference of opinion between the learned Judges, the Chief

17.

SONOO
NARAYAN
v.
DINKAR
JAGANNATH.

⁽¹⁾ (1909) 34 Bom. 316.

⁽²⁾ (1906) 8 Bom. L. R. 678.

⁽³⁾ (1916) 40 Mad. 355 at p. 361.

1917.

SONOO
NARAYAN
v.
DINKAR
JAGANNATH.

Judge holding that the opponent's suit should be wholly allowed, and the petitioner's suit should be disallowed, while the Fifth Judge was of opinion that on the evidence as it stood, the opponent Dinkar had not satisfactorily established his claim, and that the Rule for a new trial should be made absolute on the ground that fresh evidence was desirable. In this division of opinion, the order of the Chief Judge prevailed, and against that order the present petition is brought.

Mr. Kanga, the learned counsel for the petitioner, has taken two points. I will take first the simpler point, that is, that the difference between the Judges of the Full Court was a difference on a question of law, and that under section 69 of the Presidency Small Cause Courts Act there should, therefore, have been a reference to this Court. I think it may be said without exaggeration that counsel's ingenuity was hard put to it to explain how the matter upon which the Judges differed could possibly be represented as a question of law. It was indeed in my view the plainest question of fact. That question was whether upon the evidence on the record the opponent Dinkar had or had not made out his claim. The Chief Judge thought he had; the Fifth Judge thought he had not. The question appears to me to be unmistakably a question of fact, and therefore, in my judgment, the first point taken for the petitioner must fail.

The next point urged was under section 38 of the Presidency Small Cause Courts Act. Counsel contended that the Full Court had no jurisdiction to make the order which was made, because they had no appellate powers on a question of fact, and upon such questions their powers of interference were limited to cases where the judgment of the trial Judge is manifestly against the weight of the evidence. I see no reason to

doubt that, as was decided in *In re Shivalal Padma*⁽¹⁾, to which I was a party, the powers conferred under section 38 of the Act are, if a name must be found for them, more properly to be described as revisional than as appellate powers, but there is nothing, so far as I am aware, which would justify the view that these powers, however they are to be named, must be restricted to interference on questions of law. It was pointed out in *Bapuji v. Dastur*⁽²⁾, what the words of section 38 themselves make manifest, that the phraseology of this section is deliberately wide and comprehensive. All that the Legislature has ordained is that the Small Cause Court shall have power to order a new trial, or to alter, set aside or reverse the decree or order, upon such terms as it thinks reasonable, and no limit is placed by the Legislature upon the Small Cause Court's powers in the exercise of this power. There is nothing in the wording of the section, so far as I can see, which suggests that the Legislature intended to confine the powers thus generally granted to particular cases where questions of law are involved, nor can it, I think, be accurately said that the powers of interference are only to be used where the original judgment is manifestly against the weight of the evidence. To set up a limit of this kind is in my view to impose a restriction for which the words of the Legislature afford no countenance.

It is unnecessary at present to attempt to define precisely the extent of the jurisdiction conferred by section 38; it is enough to say that in this case the Full Court had jurisdiction. It is true that the decision in *Sai Sikandar Rowther v. Ghose Mohidin Marakayar*⁽³⁾ is in favour of the petitioner, but there the learned Judges followed the practice which had long

1917.

SONOO
NARAYAN
v.
DINKAR
JAGANNATH.

(1) (1909) 34 Bom. 316.

(2) (1906) 8 Bom. L. R. 678.

(3) (1916) 40 Mad. 355.

1917.

SONOO
NARAYANv.
DINKAR
JAGANNATH.

prevailed in the Madras Courts. The practice, however, on this side of India has consistently been the other way, and I do not think that the Madras decision would warrant us in altering our own *cursus curiæ* in a matter where, with all respect, I venture to think that the words of the Code afford support to the view which this Court has adopted. I am of opinion, therefore, that on the law as it is administered in these Courts, the petitioner must fail upon both the points which have been raised in his behalf. I would, therefore, discharge the Rule with costs.

SHAH, J. :—I am of the same opinion. I desire to add that I decline to interfere in this case as I am not satisfied that the Full Court has acted without jurisdiction.

I do not consider it necessary for the purposes of this case to express any opinion as to the limits within which the Full Court can interfere with propriety under section 38 of the Presidency Small Cause Courts Act on questions of fact. That must depend largely upon the practice of that Court, its judicial discretion, and the circumstances of each case. Having regard to the words of section 38, and the interpretation put thereon by this Court, I am clearly of opinion that the Full Court cannot be held to have acted without jurisdiction. Under the circumstances of this case, I do not think that there has been any illegality or material irregularity in the exercise of its jurisdiction.

Rule discharged.

J. G. R.