

(1944) 07 CAL CK 0010
In the Calcutta High Court

Dacca Co-operative Town Bank Ltd.

APPELLANT

Vs

Sm. Jnanada Sundari Debya and Another

RESPONDENT

Date of Decision : 18-07-1944

Acts Referred:

General Clauses Act, 1897 — Section 6

Citation : AIR 1945 Cal 424

Hon'ble Judges : Henderson, J

Bench : Division Bench

Judgement

Henderson, J.—This rule has been obtained by the decree-holder. An award was made in his favour under the procedure laid down in the Rules framed under the Co-operative Societies Act. He applied for execution to the Small Cause Court. The Judge held that he had no jurisdiction to deal with the application and returned the petition for presentation in the proper Court. The petitioner then applied to the Munsif. He took the opposite view holding that only the Small Cause Court had jurisdiction. He accordingly returned the petition for presentation to the proper Court. The petitioner has now gone back to the Small Cause Court with the same result. It is quite obvious that this game of battledore and shuttlecock cannot be allowed to go on indefinitely and the petitioner is entitled to have one of the orders set aside. The claim which is the subject-matter of the award was one cognizable by a Small Cause Court and, apart from the special procedure laid down in the Rules framed under Act 2 of 1912 for the settlement of such, claims, a suit would have been instituted there. The judgment-debtor was unrepresented at the first hearing and I am much indebted to Mr. Lahiry for appearing as amicus curiae and I have derived much assistance from his argument. The Act under which the petitioner obtained his award has been repealed. Ordinarily the petitioner's remedy would be preserved by Section 6, General Clauses Act. But u/s 4(2) of the new Act (Act 21 of 1940) this award shall be deemed to have been made under the new Act. As a result, the procedure laid down in this Act for the enforcement of awards will have to be followed.

2. u/s 130 sums due under an award to the Provincial Government or to a co-operative society or the authority constituted u/s 81 are recoverable in the manner provided in Schedule 3. The provision for the enforcement of other awards is laid down in Rule 127 of the Rules made by the Local Government u/s 146. The present award is governed by the former. Under the provisions of Schedule 3 the amount due is to be recovered either by the Collector as a public demand or by any civil Court having local jurisdiction in the same manner as a decree of such Court on application by the society. The question for determination therefore is whether the Small Cause Court is a civil Court within the meaning of the schedule. The term is not defined in the Act itself. It is therefore necessary to refer to Section 4 of Act 12 of 1887, in which civil Courts are divided into four classes. A Small Cause Court is not included in any of them. u/s 13(4) a Judge of a Court of Small Causes appointed to be a subordinate Judge or Munsif is a subordinate Judge or Munsif within the meaning of the section. But there is really nothing there to suggest that a Small Cause Court is one of the classes of Courts referred to in Section 4. I have therefore reached the conclusion that a Small -Cause Court is not a Court within the meaning of the schedule. In connexion with this matter stress was laid on a passage in the judgment of my Lord the Chief Justice in Narsing Das Tansukdas Vs. Chogemull and Another, . The question for determination was whether this Court was covered by the definition of civil Court in the Bengal Agricultural Debtors Act. In the course of his judgment the learned Chief Justice said this:

If the two words in question were "civil court" (without the two initial capital letters) it might well be said that they mean all Courts in the province exercising civil Jurisdiction. But the words are "Civil Courts" (with initial capital letters); that would indicate that they mean a particular class of Court exercising Civil jurisdiction well understood when the words "Civil Court" are used.

Relying on this definition the Small Cause Court Judge based his decision on the capital letters used in the schedule, while the Munsif stressed the small letters used in the rule.

3. With the greatest respect to these observations of the learned Chief Justice, which appear to be in the nature of an obiter dictum, I very much doubt, as at present advised, whether in a matter of this kind the use of capital letters which is probably quite adventitious, should be a factor in determining the intention of the Legislature. At present, however, I merely note that in this case the conclusion reached will be that at which I have already arrived: it is only in a case coming within the rule that a different result would follow. The rule is made absolute, the order of the Munsif, dated 23rd November 1942, is set aside and I direct that he do hear and determine the application in accordance with law. The costs of this rule will be costs in the execution case--hearing-fee, two gold mohurs.