

(1948) 02 CAL CK 0026
In the Calcutta High Court

Dominion of India

APPELLANT

Vs

Gopal Chandra Tapadar and Others

RESPONDENT

Date of Decision : 24-02-1948

Acts Referred:

Presidency Small Cause Courts Act, 1882 — Section 38

Citation : (1948) 02 CAL CK 0026

Hon'ble Judges : Lodge, J

Bench : Division Bench

Judgement

Lodge, J.—The facts giving rise to this rule may be stated briefly as follows: The Opposite Party No. 1 Gopal Chandra Tapadar had consigned on 28-7-1942, 440 bags of cement under cover of Risk Note z from Japla a station on the E.I. Ry., for delivery to the plaintiff at Gaibandha a station on the B. & A. Railway. The consignment was despatched from Japla in an E.I. Ry. Wagon to Bhagalpur and made over at that station to the O. & T. Railway then known as B. & N. W. Ry. It was despatched from Bhagalpur on 12-8-1942 and reached Mahadevpurghat on the O. & T Ry. on or about 16-8-1942. On 29-3-1943, the plaintiff was informed by the O. & T Ry. Administration that the goods had been lost at Mahadevpurghat owing to disturbances of August 1942. Thereafter the plaintiff instituted a suit in the Calcutta Small Cause Court making the East Indian Railway Administration defendant 1, O. & T. Railway defendant 2, B. & A. Ry. defendant 3 and claimed compensation for the nondelivery of the goods. After many adjournments the case was taken up on 6-8-1946, and witnesses were examined. Thereafter there were many adjournments and on 19-3-1947 an application for adjournment by defendant 2 was rejected, arguments were heard and the suit was dismissed as against defendant 1 without costs and decreed on contest as against defendant 2. Defendant 2 applied u/s 38. Presidency Small Cause Courts Act, that the matter be referred to the Pull Bench for argument on the question whether the Calcutta Small Cause Court had jurisdiction as against defendant 2. The application was heard on 10-6-1947, and dismissed but no reasons were given for the dismissal.

2. This rule has been obtained by defendant 2 and it is contended that the cause of action so far as defendant 2 is concerned did not arise within the jurisdiction of the Presidency Small Cause Court, that defendant 2 had no office within the jurisdiction of that Court. It was true that as against the E.I. Ry. and B. & A. Ry. the Court had jurisdiction inasmuch as the head) offices of these two Railways were situated within the jurisdiction of the Calcutta Small Cause-Court.

3. The only point now is whether the Calcutta Small Cause Court had jurisdiction to decree a suit against a defendant when the cause of action arose against that defendant outsider the jurisdiction of that Court and that defendant resided or had its head office outside the jurisdiction of that Court. It seems to me that the case in Bengal and North-Western Railway Co. Ltd. Vs. Sadaram Bhairoran, is conclusive on the subject and that the Presidency Small Cause Court had no jurisdiction as against the O. & T. Railway, defendant 2. If a reference is made to Section 18, Small Cause Courts Act, it will appear that there is nothing in this section to justify the inference that the Court had jurisdiction as against defendant 2. There is nothing whatever to show on the record that defendant 2 acquiesced in the institution of the suit against him in the Calcutta Small Cause Court. In this view it must be held that the decree as against defendant 2 was without jurisdiction and the same must be set aside.

4. The rule is accordingly made absolute. The decree against defendant 2 is set aside on the ground that the Court had no jurisdiction and the plaint is directed to be returned to the plaintiff for re-filing it in the proper Court, if so advised. I make no order as to costs in this rule.