

(1919) 04 AHC CK 0007
In the Allahabad High Court

Firm G.S. Bhargava and Co.

APPELLANT

Vs

Firm Jagan Nath Bhagwan Dass

RESPONDENT

Date of Decision : 26-04-1919

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 115

Citation : AIR 1919 All 295 : 51 Ind. Cas. 331

Hon'ble Judges : Walsh, J; Rafique, J

Bench : Division Bench

Judgement

1. We have come to the conclusion that this application must be granted. The circumstances of the case are exceptional and the form in which the matter comes before us is also exceptional. We do not propose to lay down any general proposition as to what ought or ought not to guide this Court in interfering in revision with what may be called preliminary, interlocutory or subsidiary orders made by the Courts below. In this particular case a substantial dispute has arisen with regard to a contract made between two business men carrying on business respectively at Agra and Delhi. The purchasers under the contract, having reason, as they allege, to complain of the performance of the contract, sued the vendors for damages in the Subordinate Judge's Court at Agra. The defendants were the vendors carrying on business at Delhi and at the earliest possible opportunity they took the objection that, inasmuch as the contract was made at Delhi and was by its terms to be performed outside the Agra jurisdiction, the Court at Agra had no jurisdiction to entertain the suit at all. Thereupon without objection by either party, the Subordinate Judge entertained that objection as a matter wholly independent of the merits of the suit which he had to determine, if it turned out that it was within his jurisdiction to determine, and evidence was called on both sides and considerable argument took place on either side and eventually an elaborate judgment was written upon the sole but important question, is the suit cognizable by this Court?" The learned Judge himself says it was thought proper to decide the question of jurisdiction first. He decided that question in favour of the plaintiffs on the ground that the contract was made in

Agra. An order was drawn up on the 2nd of February 1919 in the following terms:--"This case coming on for disposal on the 6th of February 1918, it is ordered that the case is cognizable by this Court." It is not contended that there is an appeal from that order. We have come to the conclusion that it is impossible to say that such an objection, dealt with in the way this objection was dealt with by what really amounted to a trial by a very careful and thorough judgment ending in the formal order of the Court, is not a case decided in which no appeal lies within the meaning of Section 115, Civil Procedure Code. We think sufficient justification for taking that view is to be found in the recent decision of the Privy Council in *Balakrishna Udayar v. Vasudeva Aiyar* 40 Ind. Cas. 650 : 40 M. 793PC : 15 A.L.J. 645 : 2 P.L.W. 101 : 33 M.L.J. 69 : 26 C.L.J. 143 : 19 Bom. L.R. 715 : 1917 M.W.N. 628 : 6 L.W. 501 : 22 C. W.N. 50 : 11 Bur. L.T. 48 : 44 I.A. 261 (P.C.).

2. We do not desire to differ in any way from the general rule which has been laid down that an application of this kind in revision ought not to be treated as an appeal; that findings of fact bearing upon an issue properly before a Court cannot be and ought not to be reviewed by the Court exercising revisional jurisdiction; but without discussing the cases upon the point, we think the trend of authority in the various High Courts in India is to this effect:--It cannot be more clearly stated than in the language of Mr. Justice Mookerjee in the case of *Rashmoni Dasi v. Ganada Sundari Dasi* 26 Ind. Cas. 275 : 20 C.L.J. 213 : 19 C.W.N. 34 that "when a Court as a Court of Revision looks into evidence, it does so with a view to determine whether the subordinate Court has assumed a jurisdiction which it did not possess." The same view has been recently given effect to by a judgment of Mr. Justice Ryves as he was then sitting in this Court in June 1918 in a case reported as *Behari Lal v. Baldeo Narain* 48 Ind. Cas. 14 : 16 A.L.J. 717 : 40 A. 674PC the reasoning of which we entirely approve and adopt.

3. We have, therefore, to consider whether on the evidence before the learned Judge there was really anything which could justify him in holding that he had jurisdiction to entertain this suit on the ground that the contract was made at Agra. We have come to the conclusion that there is nothing. As a matter of fact, with certain important exceptions, we do not differ from his conclusions of fact but the learned Judge unfortunately wholly misdirected himself and confused the negotiations with the bargain, and the terms of the contract with a binding acceptance. The facts as sworn to may be simply stated. One *Kanhaiya Lal*, who is said to be a broker or agent for the defendants, was endeavouring to obtain a purchaser for this cloth, which is suitable for use as tents, for the defendants at Delhi from persons in Agra. It may here be observed that it has been assumed that he was an agent of the defendants. There is not a scrap of evidence to that effect except the bare statement of the plaintiffs, and that statement is consistent with the broker being, as they often are, agent for both parties. He may have been an agent for the purchasers; he may have been an agent for the vendors; he may have been an agent for both parties. Like most brokers he was

extremely anxious about earning his commission, as is made clear by the evidence, but it is not clear from whom he expected to receive it. The best test of a man's employment is the question, who is liable to pay his commission. It may be assumed for the purpose of this enquiry only that he was the agent of the defendants. He had an interview with one of the members of the defendant firm in Delhi and having represented that there were purchasers of this dusuti at Agra he obtained from them two typewritten forms. This method of making a contract is one very commonly adopted among mercantile people; one document constitutes the offer, and the other constitutes the acceptance, both of them being left blank both as regards the name of the purchaser and the contract rate, neither of which were known at that time. He was told that the defendants were ready to sell at Rs. 1-13-0 or Rs. 1-12-6 per lb and he went to Agra with these two documents. Eventually he obtained an offer for Rs. 1-12 0 from the present plaintiffs. That offer was signed by Bankey Lal, a member of the plaintiff firm, addressed to the defendants at Delhi and the blank for the price was filled in with Rs. 1-12 0 per lb. At the same time according to the plaintiffs' evidence which we see no reason to discredit upon this point, the plaintiffs' clerk filled in upon the other form intended for acceptance the name of the plaintiffs' firm as purchasers and the price. It is to be observed that this price was less than the price which the defendants had told Kanhaiya Lal they were prepared to accept and there is not a scrap of evidence, indeed everything in the case including the documents points to the contrary, that the defendants authorised Kanhaiya Lal to complete a binding contract on their behalf on any terms that he was able to negotiate. This conclusion, we understand, the learned Judge came to as a matter of law or inference. What invalidates the finding to our mind is that it is absolutely out of the question that the defendants armed their agent with documents formally signed by them as binding contracts with the price left blank, and with carte blanche authority to fill them up for any price which he saw fit to arrange. Such a proceeding is almost incredible on the part of a reasonable business firm. What actually happened is testified to by the direct evidence of Keshab Deo, one of the members of the defendant firm, and is confirmed in every possible way by the documentary evidence. Having arranged this price with the plaintiffs and confident that he would persuade the defendants to accept it, he wired to the defendants at Delhi that he had sold. The learned Judge attaches great importance to this telegram. So do we; but we think it points exactly in the opposite direction to that which the learned Judge thinks it ought to be taken. So far as Kanhaiya Lal was concerned, he had sold in the sense that he had arranged a sale for his principals but he had no authority to complete the contract and if he had, there would have been no necessity for his journey to Delhi. He went to Delhi personally to report what he had done. He was at once rebuked by his principal for having used the word "sold" in the telegram. His explanation was that it was a piece of commercial license to prevent the defendants disposing of the goods anywhere else and he then, and we are satisfied for the first time, at that interview disclosed to the defendants the price at which he had arranged to sell. The defendants not unnaturally pointed out that

it was not the price which they had told him they were willing to accept. According to Keshab Deo he made an almost piteous appeal to them in his own interest as well as in the interest of the defendants to close the bargain and the bargain was then accepted. There are to our minds two pieces of internal evidence upon the document itself which the learned Judge has wholly left out of view which conclusively show the truth of this story. The signature of the vendors, the accepting firm, is dated the 8th of August, the day after the telegram, the day after the blanks had been filled in at Agra, the day of Kanhaiya Lal's interview with his principals at Delhi. The second point is that the writing of the signature of the name of the firm across the stamp accepting the contract is the same as the initials G.S.B. against the price which had been filled in in the contract. The plaintiffs' clerk made a feeble attempt to claim that these initials had been put there by him but receded from that position on looking at the document. We are satisfied that the terms were initialled by the same person who signed the document. Under these circumstances the learned Judge, having wholly ignored the importance of the fact that the document was in fact signed and the contract completed by the defendants themselves as principals, has, therefore, failed to investigate the question where and under what circumstances that which alone would make the contract a binding contract in law at all took place. he has assumed jurisdiction over a matter which, if he had properly applied himself to the facts, he was bound to hold he had no jurisdiction to try.

4. Revision is a discretionary jurisdiction but in an important matter of this kind, if the law enables us to do it, it is to the best interests of the parties themselves and of the public that if these preliminary questions can be finally determined by an authoritative decision before all the expense, annoyance and waste of time of a prolonged litigation, it is better that it should be done, and we, therefore, quash the order of the 10th of February and direct the plaint to be returned for presentation to the proper Court. The applicants must have their costs of this application.