

(1903) 02 BOM CK 0007
In the Bombay High Court

Jairamdas Ganeshdas and Another

APPELLANT

Vs

Zamonlal Kissorilal

RESPONDENT

Date of Decision : 10-02-1903

Acts Referred:

Presidency Small Cause Courts Act, 1882 — Section 6
Specific Relief Act, 1877 — Section 53

Citation : (1904) ILR (Bom) 232

Hon'ble Judges : Russell, J

Bench : Single Bench

Judgement

Russell, J.—The plaintiffs herein, Jairamdas Ganeshdas and another, sue the defendant Zamonlal Kissorilal for damages for the non-acceptance of one hundred bales of cotton and ask to restrain the defendant from proceeding with Suit No. 21205 of 1902 in the Bombay Small Causes Court. Paragraph 6 of the plaint herein sets out the nature of that suit. (His Lordship read the paragraph and continued :)

2. Mr. Inverarity for the defendant herein has raised an important question, viz., that this Court has no jurisdiction to restrain the defendant from carrying on his suit in the Small Cause Court. I take it to be an important question, for points of this kind are repeatedly raised in this Court and all questions involving jurisdiction are important.

3. The plaintiffs in their affidavit in support of the rule, which has not been replied to, state that they were induced by a threat on the defendant's part not to file this suit, and so the defendant was enabled to file his suit in the Small Cause Court first.

4. Mr. Inverarity's contention put shortly is this: that this injunction can only be granted by final decree in this suit and not on an interlocutory application. This depends on the effect of Sections 53, 54(e) and 56(a) of the Specific Relief Act (I of 1877). (His Lordship read the Section (1) and continued:)

5. In the first place, it is to be observed that the framers of the CPC have apparently expressly refrained from putting temporary or interlocutory injunctions on the same footing as they are put by the English Judicature Act, 1873, Section 25, Sub-clause 8. (His Lordship read the Section (2)).

6. Section 53 of the Specific Relief Act (I of 1877) moreover says that temporary injunctions are to be regulated by the Civil Procedure Code: see *Amir Dulhin v. Administrator-General of Bengal* (3). Sections 492 and 493 of the Civil Procedure Code, however, provide as follows. (His Lordship then read the Sections (4)).

8. It is obvious that) an application to restrain a suit in the Small Cause Court does not come within these provisions. I take it that I expressio unius est exclusio alterius, and if the framers of the CPC had intended to put interlocutory applications for injunction on the same footing as they were under the Judicature Act, they would have done so. I must assume, therefore, that they deliberately intended 21 to limit such applications to the matters enumerated in Sections 492 and 493 of the CPC only. Moreover it is under the head of perpetual injunctions only in the Specific Relief Act that the present application comes, and as that can only be granted by the decree made at the hearing, this application must be refused.

9. At the same time, it appears to me that the plaintiffs are not without another remedy. It would be a manifest injustice if they were. For their position is this. They are entitled by law to bring this suit in this Court, although it is within the jurisdiction of the Small, Cause Court. Their object in doing so is, I am told, to enable them to get discovery and inspection which they cannot get in the Small Cause Court. If the defendant herein gets his decree in the Small Cause Court, the matter will be res judicata and the plaintiffs will be without any remedy. Now of course they might file a cross suit in the Small Cause Court, which they do not wish and are not obliged to do. I am of opinion then that their proper course would be to apply to the Court to remove the defendant's suit from the Small Cause Court to this Court under Clause 13 of the Letters Patent. The Extraordinary Jurisdiction of this Court is that which the Court exercises on special occasions and in a special manner: see (1889) L.R. 16 I.A. 156 (Privy Council) of the Letters Patent applies to the exercise of the Extraordinary Original Jurisdiction of the Court. The Extraordinary Jurisdiction of the High Court is derived from Regulation II of 1827, Section 5, Clause 2, the powers conferred by which upon the Sadar Diwani Adalat were by Section 9 of 24 and 25 Vict., cap. 15, transferred to the High Court: see *Mahadaji v. Sonu* (1872) 9 Bom. H.C.R. 249. By Section 6 of the Small Cause Courts Act (XV of 1882), the Small Cause Court shall be deemed to be under the superintendence of the High Court. (His Lordship read the section. Presidency Small Cause Courts Act (XV of 1882), Section 6:

10. Rule 62 of the High Court Rules enables me to exercise any part of the jurisdiction vested in the High Court on its Original Side. But as the point has not been argued I merely throw this out for the consideration of the parties to save

them further costs; for it may be that Mr. Inverarity might convince me that an application, such as I have suggested, should be made to the High Court on its Appellate, Side.

11. I must discharge this rule with costs. Order that the sum deposited by the plaintiffs before applying for the rule be returned to them or their Attorneys.