

(1910) 03 PRI CK 0002

In the Privy Council

Kanhya Lal

APPELLANT

Vs

The National Bank of India

RESPONDENT

Date of Decision : 09-03-1910

Acts Referred:

Citation : (1910) 37 ILRPC 426

Hon'ble Judges : Macnaghten, Collins, Arthur Wilson, JJ.

Judgement

Arthur Wilson, J. 1. This appeal has been brought against a judgment and decree of the Chief Court of the Punjab which affirmed the decision of the District Judge of Delhi. The circumstances out of which the appeal arises can be briefly stated, and, as in their Lordships' opinion, the case must go back to the Chief Court for further consideration, their Lordships think it desirable to say nothing about the case which is not absolutely necessary. 2. In the year 1902 a case was pending, in which the National Bank of India was plaintiff and the Delhi Cotton Mills Company, Limited, defendant, and on the 21st April of that year the Chief Court, on appeal, made a money decree in favour of the Bank for a sum of over Rs. 97,000 and interest. On the 25th June in the same year the premises and mills of the Cotton Mills Company were purchased, as a going concern, by the present plaintiff, at public auction, for a sum very much larger than the amount of the Bank's decree. On the 15th August in the same year the Bank, in execution of their decree, obtained an attachment of the premises purchased by the plaintiff, and possession was taken under that attachment. In the same month of August the present plaintiff filed a petition in the District Court alleging that the attachment was wrongful, and that he was compelled to pay the balance due under the Bank's decree. He paid into Court accordingly and thus released the property from the attachment. On the following day the now plaintiff filed a plaint against the Bank in the District Court, in which plaint he asked for two things--first, for a decree for the amount which he had paid to release the property from attachment; and, secondly, for damages on the ground of the illegality of the attachment. 3. It is unnecessary to follow in detail the proceedings in the case. It is enough to say that on the 18th November 1902 the

District Court made an order deciding that the principal claim of the plaintiff, namely, that relating to the sum paid to release the attachment, was unsustainable in law. The learned Judge thus expressed himself:

I therefore rule that the payment was entirely voluntary, and for plaintiff's own interests, and that his remedy is under Sections 69 and 70 of the Contract Act against the Delhi Cotton Milk, and I dismiss the case for recovery with costs. The case will proceed on the question of damages for illegal attachment. 4. Their Lordships are of opinion that, so far as concerns the recovery of the money paid to discharge the attachment, this order of the District Court was a full determination, adverse to the plaintiff, of his claim in that respect. 5. On the 3rd December 1902 the plaintiff petitioned that a decree might be drawn up embodying the dismissal of his claim for the money paid into Court. This petition was dismissed. 6. The claim for damages still remained, and evidence bearing upon it was proceeded with. On the 25th May 1903 the plaintiff asked to be allowed to withdraw his claim for damages under Section 373 of the Civil Procedure Code (that is to say with liberty to sue again), and again asked that a decree should be drawn up with reference to the claim dismissed. These applications were refused; and thereupon the plaintiff absolutely withdrew from the claim for damages, but not from that for the recovery of the money paid. 7. After that the defendant proceeded to give evidence upon all the issues which had been raised, the plaintiff not appearing. In the result, the District Judge dismissed the whole case for default under Section 102 of the Civil Procedure Code. 8. On appeal to the Chief Court, the majority of the learned Judges of that Court held that the suit having been dismissed under Section 102 of the Civil Procedure Code, no appeal lay, and against that decision the present appeal has been brought. 9. Their Lordships are of opinion that the case should not be allowed to stand as it does now. As to the principal claim of the plaintiff, that relating to the money paid to release the attachment, there was in substance a clear decision of the District Judge adverse to the plaintiff; after which, in substance, no question as to that claim remained open in the Court of first instance. 10. As to the second claim, that for damages, the plaintiff having unconditionally abandoned his claim, there remained nothing in substance to be tried. 11. The case in their Lordships' opinion was one not proper to be dealt with under Section 102 of the Civil Procedure Code. 12. Their Lordships are of opinion that it is unnecessary to decide whether an appeal lies against a dismissal regularly made under Section 102, because they think that section was not applicable to the present case. They think it necessary that the case should go back to the Chief Court to decide the appeal upon its merits. In the course of the argument, several minor points were raised which it seems desirable to notice. One was with reference to the evidence already taken in the case, and the use to be made of that evidence. A second point was with reference to the refusal of the first Court to issue a commission. The third was with reference to the refusal of the Court to allow the cross-examination of a learned gentleman who had appeared as counsel in the earlier stages of the case. These are matters

upon which it appears undesirable for their Lordships to express any opinion. Such matters can be dealt with by the Chief Court when considering the case on the merits. 13. Their Lordships will humbly advise His Majesty that the decree of the Chief Court should be discharged with costs and that the case should be remitted to that Court in order, that the appeal to that Court may be heard and decided on its merits, and that the costs incurred in the District Court should abide the result of such appeal. 14. The respondents must pay the costs of this appeal.