

(1919) 07 CAL CK 0016
In the Calcutta High Court

Koramall Rambullobh

APPELLANT

Vs

Mungilal Dalim Chand

RESPONDENT

Date of Decision : 07-07-1919

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 12 Rule 6
Letters Patent Act, 1865 — Clause 15

Citation : 54 Ind. Cas. 836

Hon'ble Judges : Lancelot Sanderson, C.J.; John Woodroffe, J

Bench : Division Bench

Judgement

Lancelot Sanderson, C.J.—In my judgment there is a right of appeal in this case, on the ground that the decision of my learned brother Mr. Justice Greaves was a judgment" within the meaning of Clause 15 of the Letters Patent. The question before the learned judge was whether the plaintiff was entitled to have judgment for the sum of Rs. 9,535 odd on the state of the pleadings on the date of his application, and it is hardly necessary to point out that the alleged right might be a valuable right to the plaintiff, because if it were held by the learned Judge that the plaintiff was not entitled to the judgment for which he was asking on the state of the pleadings, it would mean that the plaintiff must wait at all events for a considerable time before he could get the judgment he was seeking : it might be months or conceivably even as much as a year. Farther than that if it was held that the plaintiff was not entitled .to a judgment for the amount alleged to be admitted on the pleadings, he would have to go to the expense and trouble of a trial on the original side. There are other matters to which I need not refer, to show that the right which the plaintiff was asserting might be a valuable and important right. Under those circumstances, I think the decision of the learned Judge did affect the merits of the question which was before him, vie., whether the plaintiff was entitled to have an immediate judgment upon the pleadings or whether he should be com-pelled to go to trial in the ordinary way, the decision, in my opinion, was a judgment within the meaning of the clause and there is a right of appeal.

Woodroffe, J.

2. I am also disposed to think that there is an appeal in this case.

Sanderson, C.J.

3. This is an appeal from the judgment of my learned brother Mr. Justice Greaves.

4. The suit was for the sum of Rs. 9,745-15 annas, for the price of goods sold and delivered. The plaintiff made an application to the Court under Order XII, Rule 6, of the CPC asking for an order that the defendant's firm may pay to the plaintiff's firm, without prejudice to the latter right to proceed with the suit for the recovery of the balance of its claim mentioned in the plaint, the sum of Rs. 9,535-15 0 admitted by the defendant firm in its written statement to be due and payable by it to the plaintiff's firm. This application was based upon the written statement of the defendant.

5. The written statement began by alleging the suit was premature. It then set out in paragraph 5 that as regards the balance of the goods which had not been paid for, the plaintiff firm, in spite of the defendant firm's readiness and willingness and even repeated offers to pay the price of the same after making reasonable deduction therefrom for damage, failed and neglected and in fact refused to accept the same, as appeared from what was stated below. The further allegation was that in view of the common practice and custom in the market which was also made an express term of the contract as stated in paragraph 3 of their written statement, the price of the said five bales had not become due on the 7th day of February 1919, when this suit was instituted. The allegation in the written statement that the suit was premature was no doubt by reason of the alleged term of the contract, whereby the price of the goods had not become due on the day the suit was instituted, namely, the 7th of February 1919. The written statement, so far, seems to me to involve a denial that the plaintiff was entitled to sue for any sum on the 7th of February. Then came paragraph 6, and therein it was alleged that there was a meeting between the Gomasta of the plaintiff's firm and the defendant or somebody on his behalf: and, it was agreed on or about the 28th of December 1918 that Rs. 210 was a reasonable allowance for the alleged damaged condition of the goods and that the defendant was to pay Rs. 9,535-15 annas instead of the amount claimed, and the plaintiff was to accept that sum but that although the defendant was ready and willing on that date and had all along been ready and willing from that date up to the time when the written statement was put in to pay that sum, the plaintiff in fact refused to accept it, and was on the date of the written statement still refusing to accept it. That paragraph taken by itself, to my mind, does amount to an unconditional admission that the plaintiff was entitled to Rs. 9,535-15 annas, Then the next paragraph states: "The defendant firm deny that the plaintiff firm have any cause of action as against the defendant as incorrectly stated in paragraph 6 of the plaint." Under these circumstances, can I say that there is an unambiguous admission that there was owing to the plaintiff the sum

of Rs. 9,535-15 annas which could be recovered in this suit ? I think it is clear that there must be an admission to that effect. It was said by Lord Justice Lopes in the case of Landergan v. Feast (1886) 34 W.R. 691 : 55 L.T.42. (which was a decision in respect of Order XXXII, Rule 6 of the English Rules, which is similar in all material respects to Order XII, Rule 6 of the CPC here) that "There must be a clear admission that the money is due and recoverable in the action in which the admission is made." Having regard to the matters to which I have referred, and especially to the first paragraph of the defence where the defendant relied upon the plea that the suit is premature, I am unable to say that there was in the written statement, taking it as a whole, an unambiguous admission that there was the sum of Rs. 9,535-15 annas due to the plaintiff, which could be recovered in this suit. Consequently I think that this appeal should be dismissed.

6. It must not be taken that I express any opinion as to the merits of the case set up by the defendant in the written statement. My judgment is with reference merely to the question whether the written statement contained such an admission as would justify an order under Order XII, Rule 6 of the Code.

(After discussion.)

7. We are of opinion that each party should pay his own costs in this appeal. "We do not interfere with the learned Judge's order as regards the costs in the Court below.

Woodroffe, J,

8. I agree.