

(1957) 04 AHC CK 0005
In the Allahabad High Court
Case No : Civil Revision No. 103 of 1954

Lal Bijai Saran Singh and Others

APPELLANT

Vs

Chandra Bahadur Singh

RESPONDENT

Date of Decision : 29-04-1957

Acts Referred:

Citation : AIR 1957 All 754

Hon'ble Judges : V.D. Bhargava, J

Bench : Single Bench

Advocate : Gopi Krishna Sahai, for the Appellant; G.P. Bhargava and G.P. Gautam, for the Respondent

Final Decision : Partly Allowed

Judgement

V.D. Bhargava, J.—This is an application in revision by the defendant in a suit arising out of a suit for accounts.

2. The opposite party had instituted a suit for accounts on the allegation that the parties were relations, that the plaintiff invested in the partnership firm a sum of Rs. 20,000/- from time to time between the year 1945 and the date of the suit, that defendant No. 2 used to maintain the accounts with the common consent, that the defendants in collusion with each other misappropriated the properties and did not render accounts of the partnership and that the plaintiff requested them to dissolve the partnership, but the defendants refused to do so; hence the suit.

3. Among other defences one of the defences was that the suit was not cognizable by the Court of the Munsif. The learned Munsif came to the conclusion that upon the allegations in the plaint itself there was more sum due to the plaintiff than the sum of Rs. 20,000/- because in paragraph 10 of the plaint he said that he invested Rs. 20,000/- and in paragraph 15 he said that the account of the said amount of capital and share profit had not been rendered. Therefore, the amount due to the plaintiff, according to the plaint could, in no event, be less

than Rs. 20,000/-.

There was no allegation by the plaintiff as to the approximate amount due to him. He accordingly returned the plaint for presentation to the Proper Court. Against that order there was an appeal and the appellate Court came to the conclusion that in paragraph 17 of the plaint the plaintiff had fixed the valuation tentatively for the purpose of jurisdiction at Rs. 500/-, and that was enough compliance with the proviso of Section 7 (iv)(b). Accordingly it remanded the case to the Munsif for trial on merits. Against this order the present application in revision has been filed.

4. Under the amended Section 7(iv)(b), according to the proviso added by this Court, in suits for accounts the court-fee is payable according to the amount at which the relief sought is valued in the plaint or memorandum of appeal. It is further provided that in suits falling under that clause such amount shall be an approximate sum due to the plaintiff and the said sum shall form the basis for calculating (or determining) the valuation of an appeal from a preliminary decree passed In the suit.

5. Learned counsel for the applicant urges that it is mandatory on the plaintiff, when he files a suit for accounts, to mention in the plaint what amount will be approximately due to him. Reliance was placed on *Jumman Khan Vs. Bhoorey Khan*, in which a Bench of this Court said:

"In a suit for dissolution of partnership and for accounts u/s 7(iv)(b) (U. P.) the plaintiff is required to state the approximate amount due to him. It will not do for him to merely value his suit for purpose of payment of court-fee at a certain figure."

6. I respectfully agree with the observations made by the Bench in the above case. That case was also a very similar to one as the present case. In that case the trial Court had returned the plaint for presentation to the proper Court. The appellate Court in remanding the suit held that according to the allegations in the plaint the approximate value of the relief which the plaintiff would claim would be within the jurisdiction of the Munsif. In that case the plaintiff had made no averment about the approximate amount due to him and the Bench remanded the case back to the Munsif.

7. Learned counsel for the opposite party had taken the plea that this Court should not interfere in revision. In exactly similar circumstances when a Bench of this Court had interfered and had held that there had been an illegality or irregularity in the Court's assuming jurisdiction in a suit which may not be within its jurisdiction. I am bound by that decision.

8. I accordingly allow this revision in part, modify the order of the Court below and direct that the learned Munsif shall require the plaintiff to state the approximate amount due to him and to apply for amendment of the plaint accordingly. When this has been done by the plaintiff, the learned Munsif shall

proceed to decide the case and find out if, after the amendment, the suit is cognizable by him or not. In case he comes to the conclusion that then according to the allegation in the plaint the amount due is more than the pecuniary jurisdiction of his, he will return the plaint for presentation to the proper Court. It is not necessary for the Munsif to enter into detailed investigation at this stage and the allegations in the plaint alone should be taken into consideration. The costs of this revision shall abide the event.