
(1924) 01 AHC CK 0004
In the Allahabad High Court

Lala Muthura Prasad and Others

APPELLANT

Vs

Bombay Baroda and Central India Railway Co.

RESPONDENT

Date of Decision : 01-01-1924

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 102, 115
Provincial Small Cause Courts Act, 1887 — Section 25

Citation : 78 Ind. Cas. 434

Hon'ble Judges : Sulaiman, J

Bench : Single Bench

Judgement

Sulaiman, J.—This is an application in revision from a decree of the District Judge of Aligarh setting aside the decree of the Munsif of Kasgunj.

2. Six bales of yarn had been booked to the plaintiff's address but only five were delivered by the defendant Railway Company. The plaintiffs brought, a suit for damages in respect of the loss of one bale. The goods had been sent under a Risk Note form B, The learned Munsif came to the conclusion that there was no theft from a running train and also that the defendant Company's servants were guilty of wilful neglect inasmuch as they had left the wagon unlocked, which was only bolted and sealed. On appeal the learned District Judge came to the conclusion- that there was a theft from a running train though he was not prepared to find definitely that there was a robbery in the strict sense of that word. He, however, relying on certain observations contained in a judgment of this Court, Civil Revision No. 164 of 1923, even though opposed to the view of the Oudh Court, held that "theft" had the same meaning as "robbery". He has also expressed some doubt as to the correctness of the finding of the Munsif that there was a wilful neglect on the part of the Railway Company. He accordingly dismissed the suit in Toto

3. The plaintiffs have come up in revision and have taken three grounds in their petition. These grounds raise questions of law and artifact the judgment of the Court below on the ground that the learned Judge's view was entirely erroneous.

4. A preliminary objection is, however, taken on behalf of the respondent Company that no such ground can be raised in this revision. In my opinion this objection is quite correct.

5. In a case which is disposed of by a Court of Small Causes the High Court, u/s 25 of the Provincial Small Cause Courts Act, has power to call for the record of the case and pass such order with respect thereto as it thinks fit. The scope of Section 25 is very wide indeed and gross errors of law may very well come within it. The present, however, is not such a case. Here, though the suit was of a Small Cause Court nature it was tried by the Munsif of Kasgunj. An appeal lay from the decree of the learned Munsif to the Court of the District Judge which was heard and disposed of. It is u/s 102 of the CPC that a second appeal is prohibited. It follows, therefore, that the present application cannot be entertained as being one u/s 25 of the Provincial Small Cause Courts Act. It can only be considered as an application u/s 115 of the Code of Civil Procedure. It is well settled that the scope of that section is very much limited. Unless the lower Appellate court can be said to have exercised a jurisdiction not vested in it by law or to have failed to exercise a jurisdiction so vested in it, or to have acted in the exercise of its jurisdiction illegally or with material irregularity, this Court has no power to interfere in revision. It is manifest that an error of judgment on questions of law does not come under either of these three categories. The learned District Judge had jurisdiction to hear the appeal. He has not refused to exercise his jurisdiction at all. He has committed no irregularity of procedure in the exercise of his jurisdiction. The utmost that can be said is that he has committed an error of judgment or has committed an error of law in the exercise of his jurisdiction. This cannot be a good ground for entertaining the application in revision. The application is dismissed with costs.