

(1967) 09 MAD CK 0044
In the Madras High Court

Madras Cine Service by Sole Proprietor T.S. Lakshmi	APPELLANT
Vs	
Shyamala Pictures Private Ltd. by Managing Director AR.M.AN. Annamalai Chettiar	RESPONDENT

Date of Decision : 19-09-1967

Acts Referred:

Presidency Small Cause Courts Act, 1882 — Section 38

Citation : (1968) 81 LW 174 : (1968) 2 MLJ 205

Hon'ble Judges : T. Ramaprasada Rao, J

Bench : Division Bench

Judgement

T. Ramaprasada Rao, J.—The question involved in this civil revision petition is of some-importance as it deals with the powers of the new trial Bench of the Court of small causes in presidency towns u/s 38 of the presidency Small Cause Court Act, 1882. The relevant facts are as follows:

2. The respondent (plaintiff) instituted a suit for recovery of moneys being the hire charges of a camera, on the foot of an agreement Exhibit P-1 executed by the petitioner (defendant) on 29th September, 1963. The plea of the petitioner was that the agreement is vitiated by undue influence and coercion and therefore un-enforceable. The trial Court dismissed the suit, being of the view that Exhibit P-1 was taken under coercion and undue influence. The new trial Bench however, reversed the decision of the trial Court and decreed the suit as prayed for. The question is whether the Full Bench of the Court of Small Causes could, the decision of the trial Court, and if it did desire to so reverse and find a fact in a manner otherwise than that found by the trial Court, whether it could dispose it of by itself.

3. It is not necessary for purposes of this petition, to traverse any more into the oral or documentary evidence adduced in this case any more into the the

4. It is no doubt true that Courts presided over by Judges who are necessarily human can weigh the pros and cons of the evidence before them and come to

conclusions different from that arrived by the Courts subordinate to them. But this general rule has some exceptions when considered in the light of the jurisdiction conferred upon them by status . u/s 37 of the presidency small cause Courts Act, 1882, it is provided.

Save as otherwise provided by this Chapter (Chapter VI) or by any other enactment for the time being in force, every decree and order of the Small Cause Court in a suit shall be final and conclusive.

After imprinting the judgment of a Small Cause Court with such finality and elusiveness, Section 38 provides for a new trial of contested cases, under which the new trial Bench, on an application by the aggrieved party, within the prescribed time, may order a new trial to be held, or aggrieved party, within the prescribed time may order a trial to be held , or alter or reverse the decree or order or order upon such terms as it thinks reasonable. Section 38 has been the subject matter of interpretation in several judgments of this. Court. Even on a prima facie reading of the said section read in conjunction with Section 37 which gives a finalty and conclusiveness to the decrees and orders of the trial Court in the small Cause Court, it appears to me that the powers of the new trial Bench are purely revisional and not appellate in character. As prefaced by me, it is possible that a different mind might come to a different conclusion on the same set of facts. But that by itself does not enable the new trial Bench of the Court of Small Causes to reverse the decision of the trial Court only on the ground that on the facts and circumstances of that particular case, it has come to a conclusion different from that arrived at by the trial Court. In *Sadasbok Gambir Chund v. Kamutjya* ILR 19 Mad. 96, the majority of the learned Judges of the Full Bench were of the View that even in a case where a new trial Bench might reasonably come to a different conclusion other than that arrived at by the trial Court, yet they would be transgressing the limits of, jurisdiction conferred upon them if they so reverse a judgment of the trial Court on questions of fact. More clearly another Full Bench of our Court in *Sai Sikandar Rowther Vs. Ghouse Mohidin Marakayar and Others*, , held as follows:

A Full Bench of the Small Cause Court sitting u/s 38 of the Presidency Small Cause Courts Act has no jurisdiction to decide questions of fact generally; nor has it jurisdiction to decide questions of fact, when those questions of fact first arise before it in consequence of its finding on a question of law.

5. This is a case in which the trial Court found as a fact, at any rate at the end of the judgment, that Exhibit P-1 is vitiated by undue influence and coercion. This is a finding of fact. u/s 38, the Full Bench of the Court of Small Causes has no jurisdiction to reverse the said finding of fact as their jurisdiction is purely revisional. On this ground it is sufficient to set aside the order of the new" trial Bench of the Court of Small Causes. But as justice should not only be done, but seem to" be done, I have considered, it desirable in the instant case to probe further and indicate as to what ought to have been done by the new trial Bench in such circumstances.

6. In the instant case, the learned Judges, as reasonable and prudent men have decided to disagree with the trial Judge on a question of fact. In such circumstances, is it to be assumed that they are helpless and for want of jurisdiction they should refrain from in any manners interfering with the judgment of the trial Court? This is not so. It is only to avoid such a misconception that Section 38 provides that the new trial Bench has the power to order a new trial to be held. The expression " may order a new trial to be held " appearing in Section 38 is specially significant. It is appropriate that in circumstances where the new trial Bench definitely is of the opinion that the findings of fact of the trial Court cannot be sustained, it can remit the matter to the trial Court for a re-consideration of the entire issue. The new trial Bench has the power in such circumstances to direct a new trial of the case by remitting the matter to the trial Court. It is possible that they can give their mind and indicate their views as Well in the order of remittal. This is, however, left to the discretion of the Bench trying the matter. But if once they come to the conclusion that the findings of fact of the trial Judge cannot be supported, it is not to be taken that they have no jurisdiction at all to do anything in the matter as their powers are purely revisional. As pointed out by Wadsworth, J., in C. Kuppiah Chetty Vs. P. Saraswathi Ammal and Others, .

If it (Full Bench of the Small Causes Court) comes to the conclusion that the findings of fact by the trial Court are unsupported by evidence and are such as to justify interference in revision the proper procedure is not to give fresh findings-of fact but to order a retrial at which the facts may be gone into afresh.

With these observations I very respectfully agree.

7. I have already stated that justice should not only be done but seem to be done. The provocation for my Observation is that the trial Judge has found both for and against the respondent (plaintiff). The following observations of the trial Judge make the position clear. I am extracting the relevant excerpts in the judgment in support of my observation.

(a) Even at the outset it should be noted that there is no evidence worth the name to support the contention of the defendant.

(b) If really there is any truth in the defence regarding the alleged coercion and undue influence, one Would expect the defendant to repudiate the agreement within a reasonable time after she executed it.

(c) Even in that reply telegram details of the alleged undue influence and duress were not mentioned.

(d) It is difficult to conceive how the plaintiff's clerk could have exercised undue influence upon the defendant in executing the agreement.

But the following extracts give a different colour to the entire subject:

(1) The circumstances were such that she had no alternative but to sign though

she knew that the amount was excessive.

(2) On a consideration of the evidence, I think the letter Exhibit P-1 was taken under coercion and undue influence....

After making such irreconcilable observations, the learned Judge dismissed the suit.

8. It is not clear from the judgment of the trial Court as to what is the clinching finding of fact which prompted him to dismiss the suit. It is in this respect that I desire that the suit should be tried once over, so that a clear finding of fact may be secured on the question in issue Whether Exhibit P-1 is tainted by coercion of undue influence.

9. Whilst therefore setting aside the order of the new trial Bench, I direct that the case be remitted to the Court of Small Causes for being tried with liberty to either party to adduce such oral or documentary evidence in the case as they may deem necessary. No costs.