

(1891) 12 MAD CK 0009
In the Madras High Court

Oakshott and Others

APPELLANT

Vs

The British India Steam Navigation Company

RESPONDENT

Date of Decision : 08-12-1891

Acts Referred:

Presidency Small Cause Courts Act, 1882 — Section 37

Citation : (1892) ILR (Mad) 179

Hon'ble Judges : Wilkinson, J; Parker, J

Bench : Division Bench

Judgement

1. The first question referred to us by the Full Bench of the Small Cause Court is whether a hearing of an application for a new trial by a Full Bench

u/s 37 of the Presidency Small Cause Act XV of 1882 can be said to be the hearing of a suit within the meaning of Section 69 of the said Act, so

as to entitle the Court to state a cast; for the opinion of the High Court either on its own motion or at the requisition of either party.

2. Section 69 of the Presidency Small Cause Act provides for a reference to the High Court in two cases (1) when two or more Judges sit

together in any suit and differ in their opinion as to any question of law or usage having the force of law, and (2) if any such question arises in any

suit in which the subject-matter is over Rs. 500 in value and either party requires such reference. The concluding clause of the Section provides for

the course to be adopted by the Court in both of the above cases: it is to draw up a statement for the opinion of the High Court of the facts of the

case, and either postpone judgment or deliver judgment contingent upon such opinion.

3. It was urged by the learned Counsel for the defendant company that the words ""in any suit"" were wide enough to include an application for a

new trial u/s 37, and we were referred to the judgment of Sir Barnes Peacock in *Ishan Chancier Singh v. Haran Sirdar* 11 W.R. 525 in which it

was ruled that an application for a new trial under the Mofussil Small Cause Act XI of 1865 was a point in the proceedings previous to the hearing

of a suit within the meaning of Section 1, Act X of 1867, and that the opinion of the High Court upon a question of law could be asked for upon

such an application, per contra we were referred by the learned Advocate-General to the remarks of Sargeant, C.J., and Farran, J., in *Ralli*

Brothers v. Goculbhai Mulchand ILR 15 Bom. 376.

4. The language used in Section 1, Act X of 1867, appears to us clearly distinguishable from that used in Section 69, Act XV of 1882. Although

an application for a new trial may undoubtedly be "a point in the proceedings previous to the hearing of a suit," yet the words "in any suit" in the

later Act appear to presuppose that a suit is actually pending. If the application for a new trial is rejected, the suit is not revived, and it becomes

impossible to give effect to the direction in the last clause of Section 69, viz., to reserve judgment or give judgment contingent upon such opinion.

We are fortified in this opinion by the fact that the High Court of Calcutta has taken a similar view in *Nusserwanjee v. Pursutum* DOSS ILR 11

Cal. 298 in which it was held, following the principle laid down in *Hall v. Joachim* 12 B.L.R. 34 that if in hearing an application for a new trial the

Judges thought it advisable to take the opinion of the High Court, their proper course was to grant a new trial, so that the point could be properly

raised. In an application for a new trial no judgment could be given which would be a contingent judgment within the meaning of the Presidency

Small Cause Act. We must answer the first question referred to us in the negative. We cannot, therefore, consider the other points referred. Costs

in this Court to follow the result of the reference.