
(1920) 12 CAL CK 0019
In the Calcutta High Court

Ohaitanya Charan Set

APPELLANT

Vs

Mohammad Yusuf

RESPONDENT

Date of Decision : 08-12-1920

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 110

Citation : 66 Ind. Cas. 407

Hon'ble Judges : Lancelot Sanderson, C.J.; Asutosh Mookerjee, J

Bench : Division Bench

Judgement

Sanderson, C. J.

1. This is an application by the plaintiff in the suit, for a certificate that this is a fit and proper case for leave to appeal to His Majesty in Council. There is no question as to the value of the subject matter of the suit, or the subject-matter of the appeal; but it is urged on behalf of the respondent that the judgment of the High Court against which it is desired to appeal was one of affirmance and that there is no substantial question of law involved. On the other hand, it is urged by the learned Vakil for the plaintiff, that the judgment of this Court was not one of affirmance, and that, if it was one of affirmance, there is a substantial question of law involved.

2. The suit was brought to recover damages for an alleged malicious prosecution. The First Court dismissed the (sic) suit without costs. The matter then came on appeal to the High Court and the decree of the High Court was as follows : "It is ordered and decreed that the decree of the lower Court in so far as it relates to costs be set aside and in lieu thereof it is hereby ordered and decreed that the plaintiff do pay to the defendant No. 1 the costs incurred by him in the Court below with interest thereon at the rate of six per cent per annum from the date of the decree of that Court until realization: And it is further ordered and decreed that save and except as aforesaid the Said decree of the lower Court be affirmed and this appeal dismissed : And it is further ordered and decreed that the plaintiff, appellant, do pay to the defendant No. 1, respondent, the sum of rupees

five hundred and thirty-two and annas six, being the amount of costs incurred by him in this Court, with interest thereon at the rate of six per cent, per annum from this date until realization,"

2. The first question which I have to decide in, whether, in the circumstances of this case, the judgment of the High Court is one of affirmance. In my judgment, it is. The only part of the judgment and decree of the lower Court which is varied by the decree of this Court was that part which related to costs. The costs were entirely in the discretion of the Court which heard the appeal. The Court exercised its discretion and ordered that the plaintiff should pay the costs of the suit in the First Court and the costs of the appeal to this Court, if we were to hold that this was not a decree affirming the decree of the lower Court, it would follow that whenever, in a case where the subject was of the requisite value, this Court varied the decision as to costs of the lower Court, however small the extent might be, and dismissed the appeal on the merit in all material respects, the party who failed on the appeal in the High Court would have a right to appeal to the Judicial Committee. I cannot believe that that was intended by the Legislature and I am confirmed in this view by the fact that no authority can be produced in Support of the contention put forward by the learned Vakil for the appellants though the situation which occurs in this case, must have occurred many times in the past.

3. In the case of Thakur Baldeo Bakhsh Singh v. Thakur Lalji Singh 10 O. C. 65. this question was considered.

4. The learned Officiating Judicial Commissioner who delivered the judgment stated as follows:---"It appears to me that we shall be doing no violence to the language of Section 596 of the CPC if we hold that the words "affirms the decision of the Court immediately below" relate to the subject matter of the suit. The caste of the suit claimed by a plaintiff are never taken into account in considering whether the subject matter of the suit in the Court of first instance amounted to Re. 10,000 for the purpose of the first clause of Section 596 of the Code of Civil Procedure.

5. "In my opinion the applicant is not entitled to appeal merely because the two Courts differed on the question of costs."

6. The learned Commissioner was dealing with Section 596 of the Code of Civil Procedure, which was then in force; but the material words in that Section do not differ from the words in Section 110 of the Code of Civil Procedure, 1908.

7. I agree with that part of the judgment. In this case the High Court merely exercised its discretion as regards the costs of the suit in the lower Court and it entirely confirmed the decision of the lower Court on the merits of the case; consequently, in my judgment, the decree appealed from affirmed the decision of the Court immediately below the High Court within the meaning of Section 110 of the Code of Civil Procedure.

8. As regards the second question, viz,---Whether there is a substantial question of law involved, I have read the judgment of my learned brother Mr Justice Richardson and it is clear from that judgment that the question was entirely one of fact and that there is no substantial question of law involved.

9. For these reasons, in my judgment, the application must be refused with costs, three gold mohurs,

Asutosh Mookerjee, J.

10. I agree,

B. N.

11. Application refused.