

(1935) 04 BOM CK 0009

In the Bombay High Court

Case No : Civil Revision Application No. 448 of 1932

Ratilal Manilal Nanavati

APPELLANT

Vs

Sakarchand Shah and Co.

RESPONDENT

Date of Decision : 17-04-1935

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 30 Rule 3
Presidency Small Cause Courts Act, 1882 — Section 38

Citation : (1942) 44 BOMLR 124

Hon'ble Judges : John Beaumont, J

Bench : Single Bench

Judgement

John Beaumont, Kt., C.J.—Civil Revision Application No. 448 of 1932 is an application in revision against an order of the Full Court of the Small Cause Court, Bombay, holding that they had no jurisdiction to entertain an application. The plaintiffs sued a firm in the Small Cause Court, and they served the present applicant with a notice under Order XXX, Rule 3, as being an alleged partner in the firm, and he appeared under protest under Rule 8. Subsequently the plaintiffs, ignoring, as they were entitled to do, the appearance of a partner under Rule 8, obtained a decree ex parte against the firm, and then they applied to try the question whether the present applicant was a partner under Order XXI, Rule 50 (2). The provisions of Order XXX and of Rule 50 of Order XXI have been applied to the Small Cause Court. Rule 50 (2) provides that where a question has to be tried as to whether a particular person was a partner in the firm against which judgment has been obtained, the Court may order the question of the liability of such person to be tried and determined in any manner in which any issue in a suit may be tried and determined. Then Sub-rule (3) provides that where the liability of any person has been tried and determined under Sub-rule (2), the order made thereon shall have the same force and be subject to the same conditions as to appeal or otherwise as if it were a decree. Then when one turns to Section 38 of the Presidency Small Cause Courts Act, that provides that where a suit has been contested, the Small Cause Court may, on the application

of either party, apply in effect to the Full Court. The question which arises is how to reconcile the language of Order XXI, Rule 50, with the language of Section 38 of the Presidency Small Cause Courts Act. It is said by the respondent that the finding under Sub-rule (2) of Rule 50, although it may have the effect of a decree, is not in fact a decree, and is not in fact made in a suit, and therefore the provisions of Section 38 do not apply. Now this precise question was considered recently by Mr. Justice Divatia in the case of Gordhandas Keshavlal v. Ramchand Banarsidas (1935) 44 Bom. L.R. 120, and he came to the conclusion in that case, in which the facts were similar to those in the present case, that the Full Court had jurisdiction to entertain an application u/s 38. The learned Judge differed from the opinion expressed by a bench of this Court in the case of Kanji Vishram Vs. Jivraj Dayal, , but he pointed out correctly that that opinion was obiter only. Sitting as a Court of co-ordinate jurisdiction with Mr. Justice Divatia I think, I ought to follow his decision on the point, and I do so the more readily, because I think I should have arrived at the same conclusion myself. The application must therefore be allowed, "and the matter remitted to the Full Court of the Small Cause Court to deal with. Rule made absolute with costs.

2. A similar order will be made in the companion application, Civil Revision Application No. 99 of 1934.