

(1992) 12 SHI CK 0002

In the High Court Of Himachal Pradesh

Case No : Civil Revision Petition No. 65 of 1990

The Sood Sabha Shri Ram Mandir, Shimla

APPELLANT

Vs

Shri R.P. Grover

RESPONDENT

Date of Decision : 11-12-1992

Acts Referred:

Provincial Small Cause Courts Act, 1887 — Section 25

Citation : AIR 1993 HP 76

Hon'ble Judges : Kamlesh Sharma, J

Bench : Single Bench

Advocate : L.C. Sood, for the Appellant; R.P. Singh, for the Respondent

Final Decision : Dismissed

Judgement

Kamlesh Sharma, J.—This civil revision is directed against the decree and judgment dated 9th June, 1989 passed by Judge, Small Cause, Shimla whereby respondent-plaintiff has been held entitled to recover an amount of Rs. 1,000/- with interest at the rate of 6% per annum from the date of deposit of security. The counter claim of the petitioner-defendant of Rs. 212/- was dismissed.

2. This revision petition is u/s 25 of the Provincial Small Cause Courts Act, 1887 (hereinafter called "the Act"). Before deciding the present revision petition, the scope of interference with the impugned decree and judgment u/s 25 of the Act needs to be considered. Section 25 of the Act is:--

The High Court for the purpose of satisfying itself that a decree or order made in any case decided by a Court of Small Causes was according to law, may call for the case and pass such order with respect thereto as it thinks fit.

The words "according to law" have been interpreted in various judgments of Supreme Court. In Hari Shankar v. Rao Girdhari Lal Chowdhury AIR 1963 SC 698, the words "according to law" appearing in Section 35 of the Delhi and Ajmer Rent (Control) Act, have been interpreted as under (at page 701):--

"The phrase "according to law" refers to the decision as a whole, and not to be equated to error of law or of fact simpliciter. It refers to the overall decision, which must be according to law which it would not be, if there is a miscarriage of justice due to a mistake of law. The section is thus framed to confer larger powers than the power to correct error of jurisdiction to which Section 115 is limited. But it must not be overlooked that the section -- in spite of its apparent width of language where it confers a power on the High Court to pass such order as the High Court might think fit -- is controlled by the opening words, where it says that the High Court may send for the record of the case to satisfy itself that the decision is "according to law". It stands to reason that if it was considered necessary that there should be rehearing, a right of appeal would be more appropriate remedy, but the Act says that there is to be no further appeal."

3. Further, Section 35 of the Delhi and Ajmer Rent (Control) Act was found similar to Section 25 of the Act and the learned Judges of Supreme Court observed:--

"The section we are dealing with is almost the same as Section 25 of the Provincial Small Cause Courts Act. That section has been considered by the High Courts in numerous cases and diverse interpretations have been given. The powers that it is said to confer would make a broad spectrum commencing, at one end, with the view that only substantial errors of law can be corrected under it, and ending at the other, with a power of interference a little better than what an appeal gives. It is useless to discuss those cases in some of which the observations were probably made under compulsion of certain unusual facts. It is sufficient to say that we consider that the most accurate exposition of the meaning of such sections is that of Beaumont, C. J. (as he then was) in *Bell and Co. Ltd. Vs. Waman Hemraj*, where the learned Chief Justice, dealing with Section 25 of the Provincial Small Cause Courts Act, observed :

"The object of Section 25 is to enable the High Court to see that there has been no miscarriage of justice, that the decision was given according to law. The section does not enumerate the cases in which the Court may interfere in revision, as does Section 115 of the Code of Civil Procedure, and I certainly do not propose to attempt an exhaustive definition of the circumstances which may justify such interference; but instances which readily occur to the mind are cases in which the Court which made the order had no jurisdiction, or in which the Court has based its decision on evidence which should not have been admitted, or cases where the unsuccessful party has not been given a proper opportunity of being heard, or the burden of proof has been placed on the wrong shoulders. Wherever the Court comes to the conclusion that the unsuccessful party has not had a proper trial according to law, then the Court can interfere. But, in my opinion, the Court ought not to interfere merely because it thinks that possibly the Judge who heard the case may have arrived at a conclusion which the High Court would not have arrived at."

This observation has our full concurrence."

4. In an other case Malini Ayyappa Naicker (Now Dead) through I.R. etc. Vs. Seth Manghraj Udhavadas Firm by Managing Partner Chathurthuj Chhabildas (Dead) Thereafter by I.Ss. and Others, the learned Judges of Supreme Court held that, "It is neither desirable nor possible to give an exhaustive definition of expression "according to law". They have again approved the observation made in Bell & Co. Ltd. v. Waman Hemraj as well as law laid down in Hari Shankar v. Rao Girdhari Lal Choudhury. On the basis of these judgments cases covered u/s 25 of the Act may be catalogued as under:--

- (i) Where the decision is without jurisdiction.
- (ii) Where the Court has based its decision on inadmissible evidence.
- (iii) Where the unsuccessful party has not been given a proper opportunity of being heard and/or proper trial in accordance with law has not been held.
- (iv) Where the burden of proof has been placed on wrong shoulders.

Looking to the purpose as contemplated u/s 25 of the Act, the High Court is required to satisfy itself that a decree or order made by the Court Small Cause, was according to law. It is difficult to give exhaustive list of cases covered by this section, however, the list of cases given hereinabove may further be supplemented as under:--

- (i) Where the decision of the Small Cause Court is not based on any evidence.
- (ii) Where the decision is based on misreading and misinterpretation of the evidence on record.
- (iii) Where a material evidence has been ignored, consideration of which may change the ultimate decision.
- (iv) Where the decision is perverse.
- (v) Where the decision is based on erroneous views of law.

5. Now the question is whether the decree and judgment under challenge was passed "according to law" or does the present case falls in any of the categories mentioned hereinabove. Shri L. C. Sood, appearing on behalf of the petitioner-defendant, has taken this Court through the evidence but he is unable to show that any material piece of evidence has not been taken into account or misread or misinterpreted. His effort was to persuade this Court to re-appreciate the evidence to come to the conclusion that the security of Rs. 1,000/- was rightly forfeited and the respondent-plaintiff is not entitled to recover it from the petitioner-defendant. But this cannot be done in exercise of the powers u/s 25 of the Act. This Court is by and large bound by the findings of fact reached by the trial court. If the legislature intended to confer power on the Court to re-examine both questions of law and fact, it would have conveyed its intention by appropriate words as has been done under various other statutes. A wrong decision on facts by competent court is also a decision according to law.

6. Another point raised by Shri Sood is that the trial Court was not justified to reject the counter claim of the petitioner-defendant. He has drawn the attention of this Court to the observations made by the trial Court that it was for the petitioner-defendant to produce Sh. Sansar Chand Sood, to whom the payment of Rs. 212/- was made as per the statement of respondent-plaintiff. According to Shri Sood, it was for respondent-plaintiff to produce Sansar Chand Sood or otherwise prove that he had made the payment of Rs. 212/- but its receipt was not given to him. This Court does not find any substance in this submission. The trial Court is right in holding that the onus of proving its counter claim was on the petitioner-defendant and it was for it to prove that the payment of Rs. 212/- was not made as alleged by the respondent-plaintiff to Shri Sansar Chand Sood, who was its employee at the relevant time. Moreover, none of the three witnesses produced by the respondent-defendant, namely S/Shri Om Prakash Sood, Bodh Raj and Jagat Ram, has stated a word about the counter claim.

7. In view of the above discussion, there is no merit in this revision petition and it is rejected. Cost on parties.