

(1940) 08 BOM CK 0002

In the Bombay High Court

Case No : Civil Revision Application No's. 552 and 553 of 1939

Vithalbhai Motibhai

APPELLANT

Vs

The Nadiad Electric Supply Co. Ltd.

RESPONDENT

Date of Decision : 23-08-1940

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 115
Provincial Small Cause Courts Act, 1887 — Section 25

Citation : AIR 1941 Bom 67 : (1940) 42 BOMLR 1098

Hon'ble Judges : Divatia, J;Broomfield, J

Bench : Division Bench

Judgement

Broomfield, J.—These are two revision applications in Small Cause Court, suits. The parties are on the one hand certain inhabitants of Nadiad who have an electric motor for the purpose of irrigating their lands and therefore require electrical energy; the other party is a Nadiad company which supplies electrical energy.

2. In one of the cases there is a question as to the construction of an agreement between the parties. In the other case another agreement between them had to be construed. There was a question whether it was consistent with certain Sections of the Indian Electricity Act and there was also a question whether the agreement had been obtained by undue influence, which of course was a pure question of fact. They are therefore quite ordinary Small Cause Court suits. The amount of money involved is very trivial, Rs. 45 in one case and Rs. 38 in the other. Prima facie it appears therefore that these are disputes which the Legislature intended to be settled by the Small Cause Court and not by a bench of two Judges of the High Court or by the High Court at all.

3. The principles according to which the High Court will exercise its extraordinary powers of revision were laid down long ago in a full bench case, Shiva Nathaji v. Joma Kashinath 1883 I.L.R.7 Bom. 341, f.b.. It is true that the Court was there concerned directly with the provisions of Section 622 of the old CPC which

correspond to the present Section 115. Nevertheless the principles there laid down in a very learned and exhaustive judgment are also applicable in our opinion to a very considerable extent to the exercise of the power of revision u/s 25 of the Provincial Small Cause Courts Act. One of the principles laid down was (p. 372):

If the Court finds that the external conditions of jurisdiction, of investigation, and of command, have been satisfied by the inferior Court, it will not substitute its own appreciation of evidence, or its own judgment thereon, for the determination of the inferior Court, in any matter committed by the Legislature to the discretion of such Court.

Another principle is:

The Court will, in all cases, regard its exercise of the extraordinary jurisdiction as discretionary, and subject to considerations of the importance of the particular case, or of the principle involved in it.

4. u/s 25 of the Provincial Small Cause Courts Act this Court has no doubt wider powers of interference than those given by Section 115 of the Code, and, although the intention of the legislature obviously was that these comparatively unimportant cases should be finally decided by the Small Cause Courts, it is no doubt right and proper that the High Court should have these powers of revision in reserve. We do from time to time interfere in exercise of that power on grounds similar to those which would justify interference u/s 115, or, apart from those grounds, when there is reason to think that there has not been a fair trial or that a palpable injustice has been committed or even in the case of a simple error of law if it is a matter of general importance. In the present cases the most that can be argued is that there has been an error of law. But it cannot possibly be argued that there is any matter of general importance. The disputes, which are not in themselves serious disputes, concern the parties to the litigation and no one else. It would be entirely wrong in our opinion and contrary to the intentions of the legislature to allow Section 25 to be used in such a way as to give an ordinary right of appeal on points of law.

5. We are informed that these cases were referred to a bench instead of being disposed of by a single Judge of this Court because a doubt was felt as to whether certain observations of the learned Chief Justice in *Bell & Co. v. Waman Hentrap* 1 were consistent with the decision of this Court in *Poona City Municipality v. Ramji* 2. Mr. Shah who appears for the applicants here says that the learned Chief Justice laid it down that the High Court should only interfere in revision in cases where it appears that there has been no fair trial by the inferior Court. We do not agree, however, that the learned Chief Justice said anything of the kind. He did not attempt to give any exhaustive list of cases in which interference would be justified, and the case where there has been no fair trial was only mentioned as one of the cases in which interference would be proper. With all respect we see nothing to criticise in the observations in this case, and

we see no inconsistency between them and what was held in Poona City Municipality v. Ramji. In the present cases we see nothing whatever which invokes the exercise of our extraordinary jurisdiction. We do not propose therefore to go into the merits and we discharge the rule with costs in both cases.