
(1929) 02 BOM CK 0020
In the Bombay High Court
Case No : O.C.J. Suit No. 2638 of 1921

Yusuf I.A. Lalji

APPELLANT

Vs

Abdullabhoy Lalji (No. 1)

RESPONDENT

Date of Decision : 18-02-1929

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 151

Citation : AIR 1930 Bom 294 : (1930) 32 BOMLR 665 : (1931) ILR (Bom) 368

Hon'ble Judges : Rangnekar, J

Bench : Single Bench

Judgement

Rangnekar, J.—On February 4, 1929, I dismissed the chamber summons taken out by defendants Nos. 4A, 4B, and 6 in suit by which they had applied for vacating the consent order made by me on December 11, 1928. I am not at all clear as to the ground on which I dismissed the summons. Two points were urged on that summons on behalf of defendant No. 13. One was that the procedure by way of chamber summons was misconceived and the proper remedy of defendants Nos. 4A, 4B and 6 was to file a suit for setting aside the consent order made on December 11, 1928. The other was that on the merits of the application no case was made out for vacating the consent order. As far as my recollection goes, I think the summons was not argued on the merits fully. But the ground taken as to the procedure being wrong was upheld by me and the summons was dismissed. The same day, the learned counsel on behalf of the defendants drew my attention to *Mulling v. Howell* (1879) 11 Ch. D. 763 on reading which I felt that the order made by me was wrong as far as that particular ground was concerned. When I looked into the matter myself, I found that there were other cases which clearly showed that an interlocutory order by consent could be set aside by the same Court on the same grounds as would invalidate a contract or agreement between parties such as fraud or mistake, etc. I, therefore, told the learned counsel to apply to me for a re-hearing of this matter. On that, the present application headed " Memorandum of review " was filed.

2. Mr. Setalvad, on behalf of some of the defendants, has raised a preliminary point that no review lies against the order made by me on December 11, and that Order XLVII, Civil Procedure Code, does not apply to this case. It may be said that about the same time when this application for review was presented to me, the order which I made on December 11 was also submitted for being signed. As it seemed to me that no review would lie unless the order which was sought to be reviewed was properly signed, I signed the same. Mr. Setalvad contends that the only point on which the present application can be sustained is that the Court committed a mistake, and relies on *Chhajju Ram v. Neki* (1922) L.R. 49 I. Section 144, 24 Bom. L.R. 1238. It is urged by Mr. Taraporevala that Order XLVII, Civil Procedure Code, applies to the case of a review of an order such as the one I have before me, an order, which may be clearly called an interlocutory order. But that contention does not appeal to me having regard to the express language of Order XLVII, Civil Procedure Code. There is no doubt, therefore, that if this is an application for review, the objection raised by Mr. Setalvad will have to be upheld.

3. It is next urged that although the application is headed "Memorandum of review", this is really an application to the Court in its inherent jurisdiction u/s 151, Civil Procedure Code, to revise or review its order if the ends of justice require it. To this argument, Mr. Setalvad replies by saying that the Court will not make use of its inherent jurisdiction as the procedure laid down by: the Code for setting aside or varying or correcting the orders once made is complete. I cannot agree. I think that an interlocutory Order made in chambers can be reviewed by the Court and ought to be reviewed if the ends of justice require it, even though the application for such a purpose does not expressly fall within the language of Order XLVII, Civil Procedure Code. Therefore, although the present summons is a summons to review the order made on December 11, 1928, I have no hesitation in treating it as an application under the inherent jurisdiction of the Court.

4. The result of taking a different view would be that in matters where various interlocutory orders are made, if a mistake is committed, which is clearly a mistake of law either because the attention of the Court was not drawn to the law bearing on the point or because the matter was not properly argued, the order, cannot be corrected even if it is manifestly against law or authority. After all, it is clear that the orders made in chambers -a majority of them at any rate- are not judgments *prima facie* either under Clause 15 of the Letters Patent or decrees within the meaning of the CPC so as to give the parties a right of appeal. If there is no remedy open to the parties to get the orders corrected, then circumstances may easily arise under which a good deal of injustice is likely to result. I have been told that a similar view was taken by Mr. Justice Tyabji in a case which unfortunately was not reported. I think that that is the proper view to take of every interlocutory order made in chambers. I, therefore, reject the preliminary point raised by Mr. Setalvad and will proceed to hear the application on the merits.