

ORIGINAL CIVIL.*Before Chaudhuri J.*

BUDHU LAL

v.

CHATTU GOPE.*

1915

Dec. 6.

Sanction for Prosecution—Revisional jurisdiction of High Court over Presidency Small Cause Court—Civil Procedure Code (Act V of 1908) s. 115—Criminal Procedure Code (Act V of 1898) s. 195—Stage in a judicial proceeding, what is—“Oath”—“Delay.”

A Judge of the Presidency Small Cause Court, Calcutta, had dismissed six applications for sanction to prosecute the plaintiffs for having made false claims. On an application to the High Court under s. 115 of the Civil Procedure Code to set aside the orders :—

Held, that under s. 195 of the Criminal Procedure Code the High Court is the superior Court to the Presidency Small Cause Court, and has power to deal with the order which was made by that Court.

Held, also, that an application for leave to sue is a stage in a judicial proceeding, where such leave is necessary to give the Court jurisdiction.

Held, also, that the delay in making the application for sanction to prosecute had been satisfactorily explained, and was not in the circumstances such as to prejudice the plaintiffs.

APPLICATION.

A Rule had been obtained on an application made under s. 115 of the Civil Procedure Code to set aside an order made by the Third Judge of the Presidency Small Cause Court, Calcutta, refusing sanction to prosecute Budhu Lal and Raghunath Lal, who had instituted 31 suits in that Court to recover from one Chattu Gope and 37 other defendants sums of money which were alleged by the plaintiffs, Budhu Lal and Raghunath Lal, to have been lent to the several

* Application in the matter of Small Cause Court Suit No. 15292 of 1913.

1915
 BUDHU LAL
 v.
 CHATTU
 GOPE.

defendants on promissory notes at Calcutta. The costs of defending these suits had been undertaken by the Government of the Province of Bihar and Orissa in the following circumstances. Some time in 1912 a dispute had arisen in the Patna district between one Jagadis Narain Lal and one Ramhari Lal, regarding the possession of a village Paura the tenants of which had espoused the cause of Jagadis Narain Lal. Thereupon Ramhari Lal instituted a number of suits against many of the tenants in the Civil Courts of the Patna district. All these suits were dismissed and were declared to be false. Thereafter at, so it is alleged, Ramhari Lal's instigation the two plaintiffs, Budhu Lal and Raghunath Lal, who are related to Ramhari Lal, instituted these 31 suits in the Presidency Small Cause Court against 40 tenants of the Paura village, who on receipt of the summonses petitioned the District Magistrate of Patna and the Subdivisional Officer of Bihar. As the result of inquiries the local Government decided to defray the costs of defending these suits.

Of the 31 suits filed 29 were set down for trial; but at the hearing the plaintiffs made no attempt to prove their claims, but agreed to abide by the statements made by the defendants facing the Ganges. The defendants were accordingly affirmed and all denied liability and also denied that they had in fact ever come to Calcutta. All the suits were then dismissed with costs on the 23rd March 1914.

On the 21st December 1914, 29 applications were filed before the Third Judge of the Presidency Small Cause Court on behalf of the 38 defendants for sanction under s. 195 of the Criminal Procedure Code to prosecute the plaintiffs, Budhu Lal and Raghunath Lal, for having committed offences punishable under ss. 193 and 209 of the Indian Penal Code. Of the 29 applications

18 were subsequently withdrawn to save costs, and it was thought that the ends of justice would be met, if the plaintiffs were convicted and punished on some of the cases. The remaining 11 applications came up for hearing before the Third Judge of the Presidency Small Cause Court on the 1st May 1915; but before the hearing was commenced 5 more applications were withdrawn at the suggestion of the Court. The remaining six applications (three against each plaintiff), were then heard together and dismissed on the grounds:—

1915
 BUDHU LAL
 v.
 CHATTU
 GOPE.

(i) That there had been a delay of 10 months in making these applications, as to which no explanation had been offered;

(ii) That as the suits had been decided on special oaths, the Court was precluded from going into the merits; and

(iii) That s. 195 of the Criminal Procedure Code did not apply because the applications for leave to sue, on which the plaintiffs had been solemnly affirmed, were made before different Judges of the Court on different dates, and because there is no provision for such an oath at the time of taking leave to sue in the Rules of Practice of the Presidency Small Cause Court or in the Act itself.

Mr. Eardley Norton (with him *Mr. H. G. Pearson*) showed cause. The application under s. 115 of the Civil Procedure Code is misconceived and cannot lie: see *Hem Chandra Ray v. Atal Behari Ray* (1). But even if such an application could be made under s. 115 of the Civil Procedure Code, no grounds have been shown for setting aside the order of the lower Court. The case at most can only fall under cl. (c) of s. 115; and it has been repeatedly held that, although a judgment

(1) (1908) I. L. R. 35 Calc. 909.

1915
 BUDHU LAL
 v.
 CHATTU
 GOPE.

may be wrong, that is of itself no ground for the exercise by a High Court of the powers given by s. 115 of the Civil Procedure Code. The High Court will only exercise such power where the decision is perverse, or in cases of grave and otherwise irreparable injustice: *Kristamma Naidu v. Chapa Naidu* (1) and *Ismalji Ibrahimji Nagree v. N. C. Macleod, Receiver* (2). Further delay is fatal: *Deputy Legal Remembrancer, Bihar and Orissa v. Ram Uday Singh* (3). Delay was one of the grounds on which the lower Court rightly dismissed the applications for sanction to prosecute the plaintiffs. No explanation of the delay was offered when the applications were heard; and the fact that some explanation has now been given is no reason for interfering with the order of the lower Court.

The Standing Counsel (Mr. B. C. Mitter) (with him *Mr. N. N. Gupta*) contended that the application had been clearly brought to the proper Court: see *Ramadhan Bania v. Sewbalak Singh* (4), *Ram Charan Chanda Talukdar v. Taripulla* (5), and *In re an Attorney* (6). Delay is not a fatal objection: *Deputy Legal Remembrancer, Bihar and Orissa v. Ram Uday Singh* (3) and the delay in this case was unavoidable and has been explained.

CHAUDHURI J. In these matters, I issued Rules on the plaintiffs in the above suits to show cause why the order refusing sanction to prosecute them should not be set aside, or why an enquiry should not be directed in order to grant such sanction. The application was headed "In the matter of section 115 of

(1) (1893) I. L. R. 17 Mad. 410.

(2) (1906) I. L. R. 13 Bom. 138.

(3) (1914) 21 C. L. J. 198;

19 C. W. N. 441.

(4) (1910) I. L. R. 37 Calc. 714.

(5) (1912) I. L. R. 39 Calc. 774.

(6) (1913) I. L. R. 41 Calc. 445.

the Code of Civil Procedure," but when it was made, it appeared to me to be more appropriate to head it under the Criminal Procedure Code, and in fact the learned Standing Counsel treated it as such an application. It has been argued that it does not come under section 115 of the Code of Civil Procedure. This is not necessary to consider. Under section 195 of the Code of Criminal Procedure this Court is the superior Court of the Presidency Small Cause Court, and has power to deal with the order which was made by that Court. This has not been seriously contested by learned counsel who appeared for the plaintiffs. Formal amendment of the heading will, if necessary, be made. So far as the verification of the application before me is concerned, it is undoubtedly faulty; but inasmuch as I think that this is a fit case for an enquiry before sanction is granted, I do not think that such faulty verification much matters. The learned Judge who dealt with the application in the Small Cause Court does not appear to me to have taken a correct view of the nature of an application for leave to sue. He has held that such an application is not a stage in a judicial proceeding. It seems to me that it is, where such leave is necessary to give the Court jurisdiction. Rule 87 of the Small Cause Court requires an application for leave to sue, to be verified as a plaint. It requires the party making such an application to be present with such evidence as may be required by the Court in support of the applicant's allegations. The practice in the Small Cause Court has apparently been to take the oath of the party when he makes such an application. There is ample jurisdiction in the Court to administer an oath at that stage, and such oath, when administered, is an oath taken in the course of a judicial proceeding. I do not think it necessary in the view I take to deal with the cases which have

1915
 BUDHU LAL
 v.
 CHATTU
 GOPE.
 CHAUDHURI
 J.

1915
 ———
 BODHU LAL.
 v.
 CHATTU
 GOPE.
 ———
 CHAUDHURI
 J.

been cited on this point. Learned counsel, Mr. Norton, has rightly contended there has been considerable delay in this matter. The delay has been explained in the affidavits before me. No doubt there was no explanation of the delay before the learned Judge, before whom the application was originally made; and although Mr. Pearson, who appeared for the plaintiffs, asked for such explanation, no explanation was given. It has, however, been given now. It would undoubtedly have been better if such explanation had been then given; but there is no reason to doubt the facts which have now been placed before me. In the circumstances, some of the delay was unavoidable especially, as references had to be made to the Bihar Government. The delay in this matter is not such as to lead me to think that there is any likelihood of the plaintiffs being prejudiced. The prosecution has been taken up by the Crown. I direct that an enquiry be held by the learned Judge as to whether sanction should be given upon the materials placed before the Court. The Oaths Act under which the suits were dismissed, has nothing to do with the matter. The merits of the cases were not decided, as upon a trial, but the result of the special oath was the dismissal of the suits. But the grounds, upon which the jurisdiction of the Court was invoked, when leave was asked for to institute the suits, are alleged to be false. Whether such grounds are true or untrue, are to be enquired into. I think these are fit cases for such an enquiry. If upon such enquiry it be found that the allegations were false and leave to sue was improperly obtained, sanction should be given to the Crown to prosecute the persons concerned. I make the Rules absolute. The matters being in the nature of criminal proceedings, I do not direct any costs.

W. M. C.

Rule absolute.