

## ORIGINAL CIVIL.

Before Lord-Williams J.

MAHOMED YUSUF

v.

ABDUL MAJID.\*

1937

Dec. 1;  
1938

Jan. 18.

*Revision—Calcutta Small Cause Court, Decisions of—Judicial superintendence by High Court—Prerogative writs—Code of Civil Procedure (Act V of 1908), s. 115—Presidency Small Cause Courts Act (XV of 1882), s. 6—Charter, 1774.*

In view of the decision in *Shew Prosad Bungshidhur v. Ram Chunder Haribux* (1) the High Court must be held to have power under s. 115 of the Code of Civil Procedure, 1908, to revise decisions of the Presidency Small Cause Court.

Under s. 8 of the Code of Civil Procedure, however, the provisions of the Code do not apply to proceedings in the Presidency Small Cause Court save such as are specifically made applicable to such proceedings by the Code itself or the Presidency Small Cause Courts Act, 1882, or such as are extended to the Presidency Small Cause Court by the High Court under the proviso to s. 8. Section 115 has not been so extended, nor has it been so applied by the Code or by the Presidency Small Cause Courts Act.

Letters Patent, 1865, and relevant statutes considered.

The High Court has, however, powers of judicial superintendence over the Presidency Small Cause Court by way of prerogative writs. Such powers are derived from the provisions of cl. 4 of the Charter dated 1774 and from the exercise by the Supreme Court of similar powers over the Court of Requests and its successor, the Presidency Small Cause Court—these powers having been preserved to the High Court by reason successively of the provisions of s. 9 of 24 & 25 Viet., c. 104, s. 106(I) of the Government of India Act, 1915, and s. 223 of the Government of India Act, 1935.

REVISION under s. 115 of the Code of Civil Procedure, 1908.

For the purposes of this report no statement of facts of the case is necessary. Arguments of counsel appear from the judgment.

*S. N. Rudra* for the petitioner.

*N. C. Chatterjee* for the respondent.

*Cur. adv. vult.*

\*Revision of the decree in Small Cause Court Suit No. 10300 of 1936.

LORT-WILLIAMS J. This is a petition under the provisions of s. 115 of the Code of Civil Procedure, 1908, in respect of a decree of the Presidency Small Cause Court, the main ground being that the Court has erred in law. I gave oral judgment on April 29, 1937, but subsequently recalled that judgment and heard further argument on points of law.

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A preliminary point was raised that s. 115 does not apply to the Presidency Small Cause Court.

Section 8 of the Code of Civil Procedure, 1908, provides, *inter alia*, that save as provided in certain sections, and by the Presidency Small Cause Courts Act, 1882, the provisions in the body of the Code shall not extend to any suit or proceeding in the Court of Small Causes in Calcutta, provided that the High Court, subject to certain conditions, may extend any of such provisions to the Small Cause Court.

Section 115 is not included in those sections, and its provisions have not been so extended.

Section 6 of the Presidency Small Cause Courts Act provides as follows:—

The Small Cause Court shall be deemed to be a Court subject to the superintendence of the High Court of Judicature at Fort William, Madras or Bombay, as the case may be, within the meaning of the Letters Patent, respectively, dated the 28th day of December, 1865, for such High Courts, and within the meaning of the Code of Civil Procedure and to be a Court subordinate to the High Court within the meaning of s. 6 of the Legal Practitioners Act, 1879, and the High Court shall have, in respect of the Small Cause Court, the same powers as it has under the twenty-fourth and twenty-fifth of Victoria chapter 104, s. 15, in respect of Courts subject to its appellate jurisdiction.

The 24 & 25 Vict., c. 104 (an Act for Establishing High Courts of Judicature in India), s. 15, provided that each of the High Courts should have superintendence over all Courts which might be subject to its appellate jurisdiction and should have certain administrative powers therein specified. This section was replaced by s. 107 of the Government of India Act.

Both these sections were interpreted as giving powers of judicial superintendence as well as of

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administrative superintendence to High Courts, and cl. 15 of the Letters Patent for the Calcutta High Court (1865), which provides for certain appeals, expressly excludes therefrom orders made in the exercise of revisional jurisdiction and sentences or orders passed or made in the exercise of the power of superintendence under the provisions of s. 107 of the Government of India Act, or in the exercise of criminal jurisdiction.

Section 107, however, has been replaced by s. 224 of the Government of India Act, 1935, the provisions of which are described in the marginal note as having reference to "administrative functions of High Courts." The result, if the marginal note is to be read as part of the section, is that the powers of judicial superintendence of High Courts can no longer be said to be derived from these Acts or sections.

The Legal Practitioners Act is irrelevant so far as the point in issue is concerned.

There remain, therefore, to be considered, the effect of the references in s. 6 of the Presidency Small Cause Courts Act to the Letters Patent and the Code of Civil Procedure.

The only mention of "superintendence" in the Code is in s. 122, and this merely refers to civil Courts subject to superintendence and confers no power of judicial superintendence.

Section 115 deals only with revision, which is not the same thing as "superintendence".

We are left, therefore, with the Letters Patent, and though they contain several references to Courts "subject to its superintendence", such as in cls. 13 and 16, they do not define or describe such Courts, nor do they confer upon the High Court any such powers of judicial superintendence. The reason for this omission will be found discussed in cl. 4 of the despatch from the Rt. Hon'ble Sir Charles Wood, Secretary of State for India, to His Excellency the Rt. Hon'ble the Governor-General of India in

Council, Judicial, No. 24, dated India Office, London, May 14, 1862. (1), namely, that it was unnecessary, because all hitherto existing powers of the Supreme Court and the Court of Sudder Dewāni Adawlat, except so far as otherwise directed by the Charter, were vested in the High Court by s. 9 of 24 & 25 Viet., c. 104.

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Clause 4 reads as follows :--

It abolishes, in the first place (as soon as the Charter shall issue), the Supreme Court and the Court of Sudder Dewāni Adawlat. It vests in the High Court (by the last provision of s. 9) the powers and authorities of those Courts respectively, except so far as the Crown may by such Charter otherwise direct. And (by the first part of the same section) it invests the High Court with such Civil, Criminal, Admiralty, Vice-Admiralty, Testamentary, Intestate and Matrimonial Jurisdiction, and all such powers and authority in relation to the administration of justice in the presidency, as the same Charter may confer. With respect, therefore, to the fusion of the Supreme and Sudder Courts, it appears obvious that the Act itself speaks, and that to assume and effect the same purpose by affirmative declaration in the Charter would be superfluous. It has been, consequently, deemed unnecessary that the Charter should exhibit on the face of it an explicit statement of the powers and jurisdiction to be possessed by the new Court in consequence of the fusion as would have been the proper course if these powers and jurisdiction had been entirely new. Recourse has been had in some places in lieu of such explicit statement to reference to statutory provisions, and in others, to the Charter of the Supreme Court when the object of clearness appeared to require it. But wherever the Charter does not otherwise specify, the High Court will use powers and administer the jurisprudence appertaining to those Courts respectively to whose authority it now succeeds.

The High Court undoubtedly has such powers of judicial superintendence, because its Justices "have such jurisdiction and authority as our Justices of our Court of King's Bench have, and may lawfully exercise within that part of Great Britain called England, by the common law thereof". These powers were conferred on the Supreme Court by cl. 4 of the Charter of 1774 and have been preserved and handed down to this High Court by reason of the provisions of s. 9 of 24 & 25 Viet., c. 104, s. 106(1) of the Government of India Act, 1915, and s. 223 of the Government of India Act, 1935. *Inter alia*, these powers include the power to issue the prerogative writs of *certiorari* and prohibition.

(1) The despatch is appended to Mulla's Code of Civil Procedure, 10th ed. at pp. 1322 to 1330.

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There can be no doubt that both the Supreme Court and the High Court have always exercised powers of judicial superintendence over the Presidency Small Cause Court, and that it and its predecessor, the Court of Requests, have always been subordinate to and subject to the judicial superintendence of the Supreme Court and the High Court. But these powers are not derived from any of the sources mentioned in s. 6 of the Presidency Small Cause Courts Act, 1882, and apart from that section, it is doubtful whether the High Court was intended to have any power of judicial superintendence over the Presidency Small Cause Court. Upon this point reference may be made to cl. 19 of the despatch to which I have already referred.

It reads as follows :—

It has been suggested that the Small Cause Court should be placed on the same footing as a *Zillah* Court in its subjection to the High Court as a Court of appeal and general superintendence. But I do not consider that it was the purpose of the Act of Parliament of last Session that the Crown, in framing a Charter under it for the High Court, should interfere with the present position and jurisdiction of other and independent Courts. This subject, if desirable, is properly to be attained by legislation. Should you be of opinion that the Small Cause Court ought to be placed in the same relation to the High Court as any other Court subject to its appellate jurisdiction and general control, the measure can be carried into effect by an Act of the Governor-General in Council.

The Secretary of State seems to have overlooked the effect of the provisions of s. 9 of 24 & 25 Vict., c. 104 or to have been unaware of the exercise by the Supreme Court of powers of judicial superintendence over the Presidency Small Cause Court.

The result is that, in my opinion, the provisions of s. 115 of the Code of Civil Procedure do not apply to suits or proceedings in the Presidency Small Cause Court, though similar relief may always be granted by the High Court by means of prerogative writs.

However, I find that in the case of *Shew Prosad Bungshidhur v. Ram Chunder Haribux* (1) it was decided by Jenkins C. J. and Woodroffe J., sitting

(1) (1913) I. L. R. 41 Cal. 323, 333.

in appeal from a judgment of this Court in its original civil jurisdiction that:—

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The High Court's revisional powers over decrees and orders of the Presidency Small Cause Court are sanctioned by s. 6 of the Presidency Small Cause Courts Act. . . . For these powers then a Presidency Small Cause Court is placed in the same position as a Court subject to the High Court's appellate jurisdiction

and the learned Chief Justice continued as follows:—

I think the fair reading of the Charter Act, the Letters Patent, and the Presidency Small Cause Courts Act leads to the result that the High Court has a right to interfere by way of revision.

The learned Chief Justice was referring to the powers of revision given to the Court under s. 115 of the Code of Civil Procedure.

This decision is binding upon me, and until, if ever, which is unlikely, the matter is taken to the Privy Council, it must be held that s. 115 applies to suits and proceedings in the Presidency Small Cause Court.

Upon the merits, I have already intimated that, in my opinion, the grounds set out in the petition do not fall within the provisions of s. 115, for the reasons given in the report to which I have referred, and in other decisions of this and other Courts in India and of the Privy Council, some of which are referred to in that report.

Therefore, the petition must be dismissed with costs.

*Application dismissed.*

Attorney for applicant: *T. C. Rudra.*

Attorney for respondent: *B. K. Mukherjee.*

P. K. D.