

QUEEN-
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him to send the case to the High Court. He observes that there will probably be an appeal. He should have remembered that there is no appeal on the facts, and the result of his not choosing to refer the case to this Court is that prisoners are convicted on evidence as to the sufficiency of which he is doubtful.

Section 307 leaves the referring of a case to the High Court entirely to the discretion of the Judge, for it is only when he disagrees with the verdict of the jury "so completely that he considers it necessary for the ends of justice to submit the case to the High Court" he should do so. This discretion should, however, always be exercised when the Judge thinks that the verdict is not supported by the evidence. It is the only way in which the miscarriage of justice by a perverse verdict of a jury, which is of too frequent occurrence, can be remedied by the High Court.

Under these circumstances, we reluctantly feel bound to dismiss the appeal.

APPELLATE CIVIL.

Before Mr. Justice Muttusami Ayyar and Mr. Justice Handley.

SIMSON (PLAINTIFF),

v.

McMASTER (DEFENDANT).*

Civil Procedure Code, ss. 525, 526, 646B—Provincial Small Cause Courts Act—Act IX of 1937, sched. II, clause 24.

A suit to recover a sum of money as payable to the plaintiff under an award which was contested was filed in a Subordinate Court on the small cause side. The Subordinate Judge returned the plaint, being of opinion that the suit was not cognizable by a Court of Small Causes. The plaint was then presented in the Court of the District Munsif as an ordinary suit, but the District Munsif returned it on the ground that the suit was cognizable by a Court of Small Causes. The plaintiff then applied to the District Judge to submit the record for the orders of the High Court:

Held, (1) that the District Judge was bound to submit the record under s. 646B of the Code of Civil Procedure on the requisition of the plaintiff, although the plaintiff might have appealed to the District Court against the order of the District Munsif;

* Referred Case No. 4 of 1890.

(2) that the suit was cognizable by a Court of Small Causes and accordingly that the order made by the Subordinate Judge returning the plaint was wrong. [SIMSON
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CASE of which the record was submitted for the orders of the High Court by C. A. Bird, District Judge of Godavari, under section 646B of the Code of Civil Procedure.

The case was stated as follows :—

“The facts of the case are that the suit was first filed in the Subordinate Court, Cocanada, on the small cause side, but the Subordinate Judge returned the plaint for presentation in a proper Court, on the ground that the suit does not lie on the small cause side. The plaint was then presented in the District Munsif’s Court of Cocanada on the original side, but it was returned by that Court on the ground that it must be brought on the small cause side. On this the plaintiff put in a petition in the High Court under section 622 of the Code of Civil Procedure, but the High Court returned the same for an appeal under clause (6), section 588 of the Code of Civil Procedure to be presented to the District Judge.

“The plaintiff then applied to this Court under section 646B of the Code of Civil Procedure to submit the record for the orders of the High Court whichever order this Court thinks wrong. The Court considers the suit one to contest an award. It appears to matter little whether the plaintiff prays to set aside an award, or whether he prays to enforce a contested one.”

The order of the Subordinate Judge returning the plaint was as follows :—

“The suit is for recovery of a sum of money awarded by an arbitrator by his award. Defendant contends that the award is unenforceable, as the same relates to certain lotteries which are not legal, and as the arbitrator acted improperly, in that he heard plaintiff in the absence of defendant.

“In this case plaintiff’s right to the relief sought by him depends upon a determination of the question whether the award is enforceable or not. That question cannot be finally determined by this Court. Besides, the suit is one for enforcement of an award. An award is, under section 30 of the Specific Relief Act I of 1877, placed on the same footing as a contract for the purposes of that Act, and a suit for specific performance of a contract cannot be taken cognizance of by a Small Cause Court.

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“If suit to contest an award cannot be brought as a small cause, a suit in which an award is impeached by defendant cannot be tried by a Small Cause Court either. I think the plaint must be returned to plaintiff for presentation to a proper Court. I return it accordingly and make no order as to costs.”

Counsel were not instructed.

MUTTUSAMI AYYAR, J.—The District Judge was bound to make this reference to this Court under section 646B, one of the parties having required him to do so. The fact that an appeal lay to him from the order made by the District Munsif does not preclude him from making the reference. I do not consider that the Judge is right in holding that a suit to contest an award or to set it aside is the same as a suit to enforce a contested award. In the first case the Small Cause Court has no jurisdiction under clause 24 of the second schedule attached to Act IX of 1887. In the second case the suit is practically one to file an award under section 525 and section 526 of the Code of Civil Procedure, and these sections are extended to Courts of Small Causes by the second schedule attached to the Civil Procedure Code. I am of opinion that the order made by the Subordinate Judge is wrong, that it must be set aside and that he should be directed to readmit the plaint and deal with it under section 525 and section 526, Civil Procedure Code.

HANDLEY, J.—I agree that the District Judge having referred the case, as he was bound to do on the requisition of a party under section 646B of the Civil Procedure Code, this Court is bound to dispose of it under that section notwithstanding that plaintiff has not filed an appeal to the District Court under clause 6 of section 588, Civil Procedure Code; and I also agree that the jurisdiction of the Small Cause Court to entertain the suit is not barred by clause 24 of schedule II of the Provincial Small Cause Courts Act, 1887, as held by the Subordinate Judge. He also apparently considers the jurisdiction of the Small Cause Court is excluded by clause 15 of the same schedule. I think the suit may be treated either as one to recover money payable under an award or as an application to file an award under section 525 of the Civil Procedure Code, and in either case the Small Cause Court has jurisdiction. I would set aside the order of the Subordinate Judge and direct him to receive the suit on the Small Cause Court side and dispose of it according to law.