

## APPELLATE CIVIL.

*Before Mr. Justice Benson and Mr. Justice Russell.*

PUTHUKUDI ABDU AND ANOTHER (PLAINTIFFS), APPELLANTS,

v.

PUVAKKA KUNHIKUTTI (DEFENDANT), RESPONDENT.\*

*Letters Patent, art. 15—“ Judgment ”—Dismissal of application under s. 25 of the Small Cause Courts Act—Appeal.*

Where an application is made to the High Court to exercise its discretionary power under section 25 of Act IX of 1887, and a single Judge dismisses the application, no appeal lies from that order of dismissal, under article 15 of the Letters Patent.

Such an order is not a “ Judgment ” within the meaning of that section. The word “ dismissed ” in such a case does not necessarily imply a decision as regards any right.

APPEAL against the order of a single Judge. The order, which merely dismissed the application, was made on a petition under section 25 of Act IX of 1887,—the Small Cause Courts Act. Against that order petitioner preferred this appeal under article 15 of the Letters Patent.

Mr. C. Krishnan, for respondent, raised the preliminary objection that no appeal lay.

Mr. T. Richmond for appellant.

JUDGMENT.—When an application is made to the High Court to exercise its discretionary power under section 25 of Act IX of 1887, and a single Judge merely dismisses the application, there is in our opinion no appeal under article 15 of the Letters Patent, for there is no “ Judgment ” within the meaning of that section. The word “ dismissed ” in such a case does not necessarily imply a decision as regards any right or alleged right of the petitioner. It is only a statement that the Judge will not, in the exercise of his discretion, interfere with the order of the Small Cause Court. He is not bound to interfere even if he thinks the judgment appealed against is wrong and even if the Judge has sent for the record before

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\* Appeal No. 37 of 1903 under section 15 of the Letters Patent against the order of Mr. Justice Boddam in Civil Revision Petition No. 436 of 1902 presented under section 25 of Act IX of 1887 to revise the decree of the District Munsif of Panur in Small Cause Suit No. 741 of 1902.

dismissing the application that makes no difference. He may wish to do so and even to hear the parties before deciding whether the case is one in which he ought to exercise the discretionary powers vested in him. There being no "Judgment" to be appealed against we dismiss this appeal with costs.

PUTHUKUDI  
ABDU  
v.  
PUVAKKA  
KUNHIKUTTI.

## APPELLATE CIVIL.

*Before Sir S. Subrahmanya Ayyar, Officiating Chief Justice.*

KUPPUSWAMI CHETTY (PLAINTIFF), APPELLANT,

v.

ZAMINDAR OF KALAHASTI (DEFENDANT), RESPONDENT.\*

1903.  
November 4.

*Civil Procedure Code—Act XIV of 1882, s. 220—Costs—Discretion of Court—Grounds for depriving successful plaintiff—Misconduct—Suit filed after admission of indebtedness by defendant.*

The discretion given to the Court under section 220 of the Code of Civil Procedure is one which is to be exercised with reference to general principles. Where a plaintiff comes to enforce a legal right and there has been no misconduct on his part, no omission or neglect which would induce the Court to deprive him of his costs, the Court has no discretion and cannot take away the plaintiff's right to costs. The fact that a defendant has, previously to a suit being filed, admitted that the money sued for was due to the plaintiff is not a ground for depriving the plaintiff of his costs.

**COSTS.** Plaintiff sued to recover Rs. 3,509-7-6 due on two promissory notes executed by defendant. The defendant's written statement was as follows :—

"That it is true that the promissory notes referred to in paragraphs 1 and 2 of the plaint were executed by the defendant. That the plaintiff having preferred a claim to the Regulation Collector under Regulation V of 1804 as amended by the Madras Act IV of 1899 on the said two promissory notes the claim was allowed and the intimation of the Regulation Collector's decision was also sent to the plaintiff on or about the 22nd May 1901. The defendant is not therefore liable for the costs of the suit. It is therefore prayed that this Court will be pleased to exonerate this defendant from the payment of the costs of the suit."

\* Appeal No. 87 of 1902 presented against the decree of K. C. Manavedan Raja, District Judge of North Arcot, in Original Suit No. 28 of 1901.