

the schedule. The schedule does not exclude every suit for contribution from the cognizance of a Court of Small Causes, but specifies the classes of suits for contribution which are so excluded. The present suit manifestly does not come under any of those classes, and was, therefore, cognizable by the Court of Small Causes. This view is supported by the ruling in *Bisva Nath Shah v. Naba Kumar Chowdhary* (1). We accordingly set aside the order of the Court of Small Causes returning the plaint, and direct that Court to receive back the plaint and try the suit.

1905

BHAIRON
v.
RAM HARAN.

Before Mr. Justice Banerji and Mr. Justice Richards.

CHHOTU (PLAINTIFF) v. JAWAHER (DEFENDANT).*

Small Cause Court—Jurisdiction—Suit for balance due on a partnership account—Addition of prayer for declaration of dissolution of partnership—Civil Procedure Code, section 646B.

Where a plaint asked in effect for the recovery of a balance alleged to have been struck on the winding up of a partnership. *Held* that the fact that a prayer for a declaration that the partnership had been dissolved was added did not oust the jurisdiction of the Court of Small Causes.

Held also that when a reference is made to the High Court under section 646B of the Code of Civil Procedure, the Court which makes it should state its reasons for considering the opinion of the Subordinate Court with respect to the nature of the suit to be erroneous.

THIS was a reference made under section 646B of the Code of Civil Procedure by the District Judge of Benares in the following terms:—

“The applicant filed the suit out of which these proceedings arise in the Court of the Munsif. On the objection of the opposite party the Munsif ruled that he had no jurisdiction, and returned the plaint for presentation to the Court of Small Causes. The Judge of the Court of Small Causes, however, held that the suit was not cognizable by that Court, and returned the plaint for presentation to the proper Court. There can be no doubt that the suit was cognizable either by the Court of Small Causes or by the Munsif, and by no other Court. Either the Judge of the Court of Small Causes has erroneously held that the suit was not cognizable by him or the Munsif has erroneously held that it was. I, therefore, on the application of the plaintiff, submit the record to the High Court. I do not consider it really necessary for me to express an opinion as to which Court was right, but I am inclined to think, in view of *Narayan v. Balaji* (2) that the suit is cognizable by the Court of Small Causes.”

* Miscellaneous No. 338 of 1905.

1905

СНОТУ
v
JAWAHIR.

On this reference the Court passed orders as follows:—

BANERJI and RICHARDS, JJ.—This is a reference made by the District Judge of Benares under section 646B of the Code of Civil Procedure. We must, in the first place, observe that the learned Judge has not strictly complied with the requirements of the section, which directs that the Court shall submit the record to the High Court with a statement of its reasons for considering the opinion of the subordinate Court with respect to the nature of the suit to be erroneous. Such a statement of reasons is not contained in the order of reference of the learned Judge. We have, however, considered the facts of the case. The allegations in the plaint are that there was a partnership between the parties; that an account of the partnership was taken, and a balance was struck and admitted to be due; that the defendant promised to pay the amount so found due on account of the plaintiff's share, but that he had not made the payment. The suit was, therefore, really one for the balance of a partnership account in which a balance had been struck by the parties. Such a suit is not excluded from the cognizance of a Court of Small Causes. In the prayer in the plaint, no doubt, the plaintiff asked for a declaration that "the partnership had been dissolved," and prayed for a decree for Rs. 44-13-0 "or whatever amount may be declared proper by the Court." This was, as the Munsif pointed out in his judgment, apparently done with a view to oust the Small Cause Court of its jurisdiction. Upon the allegations in the plaint it was not necessary for the plaintiff to ask for a declaration that the partnership had been dissolved, and this part of the claim may be treated as surplusage. As we have already said, the plaintiff's allegation was that the partnership had ceased to exist, that an account had been taken and that a sum of Rs. 44-13-0 had been found due to the plaintiff, and the defendant had promised to pay it. Having regard to these allegations we must look to the real nature of the claim, which was clearly one cognizable by a Court of Small Causes. That Court should, in our opinion, have entertained the suit. We accordingly set aside the order of the Court of Small Causes directing the plaint to be returned, and order that Court to take back the plaint and try the case according to law.