

Before Mr. Justice Ashworth.

MADAN LAL (PLAINTIFF) v. LAL CHAND (DEFENDANT).*

Act No. IX of 1887 (Provincial Small Cause Courts Act),
section 25—Revision—Decision not according to law, but
no substantial injustice.

1927
January,
7.

There should be no interference by the High Court under section 25 of the Small Cause Courts Act, 1887, unless it clearly appears that some substantial injustice to a party to the litigation has directly resulted from a material misapplication or misapprehension of law or material error in procedure in the Court of Small Causes. *Muhammad Bakar v. Bahal Singh* (1), followed.

THE facts of this case sufficiently appear from the judgement of the Court.

Munshi *Shambhu Nath Seth*, for the applicant.

The opposite party was not represented.

ASHWORTH, J. :—This is an application in revision under section 25 of the Provincial Small Cause Courts Act against a decree of the Small Cause Court Judge of Kasganj, dismissing the plaintiff applicant's suit against the defendant respondent on the basis of a promissory note.

The plaintiff was admittedly the holder of the promissory note, and section 78 read with section 8 of the Negotiable Instruments Act (XXVI of 1881) enacts that such a note can only be discharged by payment made to the holder of the instrument. There can be no doubt that the lower court should not have allowed evidence to show that the promissory note was not really executed in the plaintiff's favour or evidence that the note had been discharged by payment to the person really interested. This was held in the Full Bench decision of the Madras High Court, *Subbha Narayana Vathiyar v. Ramaswami Aiyar* (2). There

* Civil Revision No. 156 of 1926.

(1) (1890) I.L.R., 13-ALL., 277.

(2) (1906) I.L.R., 30 Mad., 88

1927

FADAN LAL
 v.
 LAL CHAND.

can be no doubt, therefore, that the decision of the suit by the lower court was not according to law.

The question, however, arises whether the mere fact of the decision not having been according to law will justify interference in revision. The power to revise conferred by section 25 of the Provincial Small Cause Courts Act is a discretionary power and it has been ruled by a Full Bench decision of this Court, *Muhammad Bakar v. Bahal Singh* (1), that there should be no interference under section 25 of the Small Cause Courts Act "unless it clearly appears that some substantial injustice to a party to the litigation has directly resulted from a material misapplication or misapprehension of law or material error in procedure in the Court of Small Causes." Now, any decree passed on a wrong view of law must cause a substantial injury to a party whose suit is dismissed by reason of that mistake. But this injury is not necessarily an injustice. In the present case the lower court found that the plaintiff was not entitled in justice to recover the money, as he made no payment to the debtor and as the debtor had paid the real person in consideration of whose loan the promissory note was executed. In these circumstances I am unable to hold that the dismissal of the suit caused a substantial injustice to the applicant. I am bound by the decision of the Full Bench of this Court, referred to above, to hold that section 25 of the Act must not be invoked in the absence of such substantial injustice.

Accordingly this application is dismissed, but as no one appears for the opposite party. I make no order as to costs.

Application dismissed.