

by the phraseology of the note which appears at the foot of the article in question.

We are therefore of opinion that the order of the learned Subordinate Judge calling upon B. Prithvi Nath Bhargava to pay an additional sum of Rs.1,405-13 was wrong, and it is not necessary for us, for the purpose of disposing of this application, to consider any of the other contentions raised on behalf of the applicant. We are of opinion that nothing further was due from the applicant, and we accordingly allow this application, and set aside the order of the Court below, with costs in favour of the applicant in both courts.

*Application allowed.*

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PIRTHVI  
NATH  
BHARGAVA  
v.  
IN THE  
MATTER  
OF THE  
ESTATE  
OF LATE  
R. B.  
TRILOK  
NATH  
BHARGAVA

Ziaul Hasan  
and Smith,  
JJ.

## REVISIONAL CIVIL

*Before Mr. Justice Bisheshwar Nath Srivastava, Acting Chief Judge and Mr. Justice G. H. Thomas*

BABU HAR DAYAL VAKIL (DEFENDANT-APPLICANT) v. BABU RAGHUBAR DAYAL (PLAINTIFF-OPPOSITE PARTY)\*

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August, 9

*Civil Procedure Code (Act V of 1908), section 95 and order XXXVIII, rule 5—Attachment before judgment—Application for attachment before judgment unjustified and based on insufficient grounds—Compensation for wrongful attachment, opposite party whether entitled to—Provincial Small Cause Courts Act (IX of 1887), section 25—Small Cause Court finding that the case is not cognizable by it and returning plaint for presentation to proper court, whether amounts to decision of case by it—Revision—High Court's power to entertain revision and award compensation under section 95.*

Where an application for attachment before judgment under order 38, rule 5, C. P. C., is altogether unjustified and based on altogether insufficient grounds, the opposite party is entitled to reasonable compensation.

Where a Small Cause Court does not decide a suit on merits but arrives at a finding that the suit is not cognizable by it and directs the plaint to be returned for presentation to the proper court the case must be deemed to have been decided so far as the

\*Section 25 Application No. 17 of 1933, against the order of Babu Harcharan Dayal, Subordinate Judge (as Judge of Small Cause Court), Bahraich, dated the 5th of November, 1932.

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Court of Small Causes is concerned and the High Court can exercise its revisional powers under section 25 in respect of orders passed in the course of the Small Cause Court proceedings. There is nothing in section 25 Small Cause Court Act to prevent the High Court from granting compensation under section 95 C. P. C. where the order of Small Cause Court in refusing such compensation clearly ignores the terms of section 95 and is not one according to law.

Mr. *K. P. Misra*, for the applicant.

Mr. *B. K. Dhaon*, for the opposite party.

SRIVASTAVA, A.C.J. and THOMAS, J.:—This is an application for revision of an order passed by the learned Subordinate Judge of Bahraich in a case which was instituted before him on the Small Cause Court side refusing the applicant compensation under section 95 of the Code of Civil Procedure.

The facts of the case are that the opposite party filed a suit in the Court of the Subordinate Judge, Bahraich, on the Small Cause Court side and made an application for attachment before judgment of a decree held by the defendant who is the applicant before us. The application was granted *ex parte*. Subsequently the plaint in the suit was returned for presentation to the proper Court. Thereupon the plaintiff opposite party made another application to the Court intimating that he intended to apply in revision against the order returning the plaint and asking for the attachment to be continued till such time as the application for revision is made and an order obtained from the higher Court. This request was also granted *ex parte* and the attachment was ordered to be continued. No application for revision was made and the order lapsed when the suit which was afterwards filed on the regular side was withdrawn. The applicant then made an application for compensation under section 95 but this application was rejected. The present application is directed against this order.

The only ground put forward in the application for attachment before judgment was that unless the attach-

ment is made the plaintiff in the event of success will have difficulty in realising the decretal amount. The application does not mention any of the grounds which justify an application for attachment before judgment under order XXXVIII, rule 5 of the Code of Civil Procedure. Thus on the face of the application it is clear that the application was made on altogether insufficient grounds. It is really surprising that the Subordinate Judge should have granted the application. The subsequent order continuing the attachment after the plaint had been returned is even more surprising. The result of the two orders in question was that the applicant was prevented from reaping the fruits of his decree for a period of about two years. Section 95 of the Code provides that a court may award compensation not exceeding one thousand rupees in any case where it appears that "an attachment was applied for on insufficient grounds." As stated before there is absolutely no doubt that the application for attachment made by the opposite party in this case was altogether unjustified. This being so the case is clearly one in which the applicant is entitled to reasonable compensation against the opposite party.

It has however been argued on behalf of the opposite party, in the first place, that the application for revision does not lie as there was no case decided by the Subordinate Judge in the exercise of his Small Cause Court jurisdiction. Section 25 provides that the High Court, for the purpose of satisfying itself that a decree or order made in any case decided by a Court of Small Causes was according to law, may call for the case and pass such order with respect thereto as it thinks fit. The orders of attachment in question were passed in the course of proceedings in a case which was instituted before the Subordinate Judge on the Small Cause Court side. Even though the Court did not decide it on its merits yet when the Court arrived at a finding that the suit was not cognizable by the Small Cause Court and directed

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the plaint to be returned for presentation to the proper court the case must be deemed to have been decided so far as the Court of Small Causes was concerned. We are therefore of opinion that there is nothing in the provisions of section 25 to prevent us from exercising our revisional powers in respect of orders passed by the learned Judge in the course of the proceedings in the Small Cause Court suit before him.

Next it was argued that the grant of compensation under section 95 is a matter of discretion. This is so, but the discretion has to be exercised in a judicial manner. The learned Subordinate Judge has given no reasons for refusing the application. We think the order clearly ignores the terms of section 95 and is not one according to law.

Lastly as regards the amount of compensation we think that the applicant having been deprived of the use of his decretal amount amounting to about Rs.450 for about two years, a sum of Rs.50 would be a reasonable and proper compensation.

The result therefore is that we allow the application, set aside the order of the lower court and grant the applicant a decree for Rs.50 by way of compensation under section 95 of the Code of Civil Procedure. The applicant will also get his proportionate costs in this Court.

*Application allowed.*