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LAL

The principle laid down in this case was followed by the Bombay High Court in *Laldas Jibhai v. Bai Lala* (1) and by the Court of the Judicial Commissioner of Sind in *Khanchand Jawhersingh v. Kodumal Jawhersingh* (2).

Thomas and
Ziaul Husain,
JJ.

In any case we are perfectly convinced that the order of the court below setting aside the award was passed without jurisdiction and we have therefore no alternative but to set aside the decree of the lower court and send the case back to that court to dispose of the objections to the award according to law. We therefore order accordingly. The defendant No. 1 will get his costs of this Court. In view of this order the plaintiff's appeal No. 38 of 1935 becomes infructuous and is dismissed.

Appeal allowed.

REVISIONAL CIVIL

Before Mr. Justice Bisheshwar Nath Srivastava, Chief Judge

1937
September, 8

SHAHID ALI AND ANOTHER (APPLICANTS) v. MESSRS SIKRE BROTHERS COAL MERCHANTS THROUGH DWARKA PRASAD (OPPOSITE-PARTY)*

United Provinces Agriculturists' Relief Act (XXVII of 1934), section 5—Provincial Small Cause Courts Act (IX of 1887), section 25—Small Cause Court refusing to grant instalments under section 5, Agriculturists' Relief Act—Revision under section 25, Provincial Small Cause Courts Act, whether lies against the order—Appeal against the order, whether lies to District Judge or High Court.

No revision under section 25 of the Provincial Small Cause Courts Act is maintainable against an order of the Court of Small Causes refusing to grant instalments in an application under section 5 of the United Provinces Agriculturists' Relief Act. *Krishna Datt v. Ram Saran* (3), and *Kunj Behari v. Baijnath* (4), referred to.

*Section 25 Application No. 112 of 1936, against the decree of Sayid Shaukat Husain, Judge, Small Cause Court, Lucknow, dated the 15th of August, 1936.

(2) (1908) 1 I.C., 105.

(2) (1911) 15 I.C., 819.

(3) (1933) 10 O.W.N., 1085.

(4) (1933) 10 O.W.N., 995.

For the purpose of section 5(2) of the Agriculturists' Relief Act the Court of Small Causes must be deemed to be immediately subordinate to the court of the District Judge. So an appeal against an order of the Court of Small Causes refusing to grant instalments in an application under section 5 of the Agriculturists' Relief Act shall lie to the District Judge and not to the High Court.

Mr. *D. K. Seth*, for the applicant.

Mr. *Jagdish Narain*, for the opposite-party.

SRIVASTAVA, C.J.:—This is an application under section 25 of the Provincial Small Cause Courts Act read with section 5 of the United Provinces Agriculturists' Relief Act against an order of the learned Judge of the Court of Small Causes, Lucknow.

The applicants applied to the lower court for reduction of interest under section 30 and for the fixing of instalments under section 5 of the Agriculturists' Relief Act in respect of a decree passed by the Court of Small Causes, Lucknow. The lower court found that the applicants were agriculturists, but it refused to give them any relief because the transaction on the basis of which the decree was passed was not a loan. The applicants have submitted to the lower court's order holding that the applicants were not entitled to claim any reduction of interest. They have, however, applied to this Court in revision against the order refusing to make the decretal amount payable in instalments.

A preliminary objection has been raised on behalf of the decree-holder-opposite-party that the application in revision is not maintainable. As just stated, the present application is confined to a relief for instalments under section 5 of the Agriculturists' Relief Act. Sub-section 2 of that section provides that if the judgment-debtor has been refused instalments the order shall be appealable "to the court to which the court passing the order is immediately subordinate". In answer to this objection it is contended that the right

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of appeal allowed to the judgment-debtor does not exclude the jurisdiction of this Court to entertain revisions against orders of the Court of Small Causes, under section 25 of the Small Cause Courts Act. A request has also been made that in case it is held that the revision is not maintainable the application may be treated as an appeal.

Srivastava,
C. J.

As regards the first ground, it is pointed out that the position in the present case is analogous to a case under section 24 of the Provincial Small Cause Courts Act in which case the Small Cause Courts Act allows an appeal to the District Court. It is further pointed out that in *Krishna Datt v. Ram Saran* (1), one of the learned Judges of this Court relying on a decision of the Allahabad High Court held that the exercise of the right of interference under section 25 of the Provincial Small Cause Courts Act does not depend on the question whether an appeal lies or not. My attention has also been drawn to the decision of another learned Judge of this Court in *Kunj Behari v. Baijnath Thakur* (2), in which also it was observed that it cannot strictly be said that this Court has no jurisdiction to entertain an application in revision for the law allows a right of appeal. The learned Judge further observed as follows:

“I think, however, it may well be said that this Court in exercising its jurisdiction ought not to interfere with an order against which the law allows an appeal when the party aggrieved has not instituted any appeal.”

I am entirely of the same opinion. I therefore think that I should not entertain this application by way of revision. But in view of the fact that the question whether the applicants should seek their remedy by means of an appeal or by means of a revisional application was not altogether free from doubt so much so that the applicants in their application itself have made the prayer that if it is held that an appeal lies in the

(1) (1933) 10 O.W.N., 1085.

(2) (1933) 10 O.W.N., 995.

case then the present application may be treated as an appeal, I think I should accede to the applicants' request, and treat this application as an appeal.

The next question is whether the appeal lies to this Court or to the court of the District Judge. As already stated the appeal lies to the court to which the court passing the order is immediately subordinate. In my opinion the Court of Small Causes is under general subordination of the court of the District Judge. It should also be noted that there is only one case namely that referred to in section 24 in which the Provincial Small Cause Courts Act allows an appeal against orders of the Court of Small Causes. This appeal lies to the District Court and not to the High Court. I am therefore of opinion that for the purpose of section 5(2) of the Agriculturists' Relief Act the Court of Small Causes must be deemed to be immediately subordinate to the Court of the District Judge.

I therefore order that the present application be returned to the applicants for presentation to the Court of the District Judge. The applicants will pay the costs of this Court to the opposite-party.

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*Srivastava,**C. J.*