

FULL BENCH.

APPELLATE CIVIL.

Before Sir Lawrence Jenkins, K.C.I.E., Chief Justice, Mr. Justice Chandavarkar and Mr. Justice Beaman.

1907.
March 19.

NARAYAN SITARAM MULAY AND OTHERS (ORIGINAL PLAINTIFFS),
APPLICANTS, v. BHAGU DIN GANGA GHANEKAR AND OTHERS
(ORIGINAL DEFENDANTS), OPPONENTS.*

Provincial Small Cause Courts Act (IX of 1887), sections 17 and 22—Civil Procedure Code (Act XIV of 1882), section 203, paragraphs (1) and (2)—Court invested with Small Cause Court powers—Decision—Reasons.

The judgment of a Court invested with Small Cause Court powers need not contain more than the points for determination and the decision thereon; the practice and procedure of such Courts being determined in the matter of judgments by paragraph (1) of section 203 of the Civil Procedure Code (Act XIV of 1882).

Ramchandra v. Ganesh⁽¹⁾ dissented from.

APPLICATION under the extraordinary jurisdiction (section 25 of the Provincial Small Cause Courts Act, IX of 1887) against the decision of V. N. Rahurkar, Subordinate Judge of Devrukh in the Ratnagiri District.

The plaintiffs sued to recover from the defendants Rs. 100 on a money-bond. The suit was brought in the Court of the Subordinate Judge in his Small Cause jurisdiction.

The defendants denied execution of the bond.

The Subordinate Judge upheld the defendants' plea and dismissed the suit.

The plaintiffs applied under the extraordinary jurisdiction (section 25 of the Provincial Small Cause Courts Act, IX of 1887) urging *inter alia* that it was an error to give a judgment without grounds and that the Subordinate Judge failed to see that he was not a Small Cause Court Judge but was simply a Court invested with the jurisdiction of a Small Cause Court. The application

* Application No. 168 of 1906 under the extraordinary jurisdiction.

(1) (1898) 23 Bom. 382.

came on for admission before Jenkins, C. J., and Beaman, J., who in granting a *rule nisi* recorded the following reasons :—

This is an application to us for a rule to show cause why the decree of the Subordinate Judge should not be set aside on the ground that it fails to comply with section 203 of the Code of Civil Procedure.

The Subordinate Judge exercises Small Cause Court powers and so his Court was a Court invested with the jurisdiction of a Court of Small Causes.

It is, however, contended that though the Court is one invested with the jurisdiction of a Court of Small Causes, it is not a Court of Small Causes within the meaning of the first paragraph of section 203 of the Code of Civil Procedure.

This argument is sought to be fortified by reference to the decision in *Ramchandya v. Ganesh*⁽¹⁾, where it was held that there was an appeal from a Court exercising the jurisdiction of a Court of Small Causes.

The point is not free from doubt and it is represented to us that there has been no decision which deals directly with the matter now under consideration; and under the circumstances we think it desirable that the case should be decided after argument before the Court.

When the matter comes up for decision it will be necessary to have regard to other provisions than sections 203 and 25 of the Code of Civil Procedure.

Thus by section 32 of the Provincial Small Cause Courts Act it is provided that "so much of Chapters III and IV as relates to practice and procedure of Courts of Small Causes applies to Courts invested with the jurisdiction of a Court of Small Causes."

Then by section 17 which is in Chapter IV, it is provided that "the procedure prescribed in the chapters and sections of the Code of Civil Procedure specified in the second Schedule to that Code shall, so far as those chapters and sections are applicable, be the procedure followed in a Court of Small Causes in all suits cognizable by it, and in all proceedings arising out of such suits."

Among the chapters and sections extending to Provincial Courts of Small Causes set forth in the second Schedule to the Code of Civil Procedure is Chapter XVII which includes section 203.

Also by section 5 of the Code of Civil Procedure it is provided that "the chapters and sections of this Code specified in the second Schedule hereto annexed extend (so far as they are applicable) to the Courts of Small Causes constituted under Act IX of 1857, and to all other Courts (other than the Courts of Small Causes in the towns of Calcutta, Madras and Bombay) exercising the jurisdiction of a Court of Small Causes."

Thus we find that notwithstanding what was decided in *Ramchandya v. Ganesh*⁽¹⁾, there may be strong arguments in support of the view that the first

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paragraph of section 203 of the Code of Civil Procedure applied not only to Courts of Small Causes but also to Courts invested with the jurisdiction of the Court of Small Causes.

Under the circumstances we grant the rule calling on the defendants to show cause why the decree of the Subordinate Judge should not be set aside on the ground that it fails to comply with the provisions contained in the second paragraph of section 203 of the Code of Civil Procedure.

The rule came on for argument before Russell, Ag. C. J., and Beaman, J., who referred the point for the consideration of a Full Bench. The following is the reference :—

In consequence of the cases which have been cited to us in the argument for the applicant, viz., *Bhagvan Dayalji v. Balu*⁽¹⁾, *Malhari v. Narso Krishna*⁽²⁾, *Rampratap v. Ganesh Rangnath*⁽³⁾ and *Ramchandra v. Ganesh*⁽⁴⁾, which we find it impossible to distinguish in principle from the present one before us, but with which we are not disposed to agree, we feel compelled for the reasons indicated by the learned Chief Justice in the judgment on the rule to refer the following question to a Full Bench :—

Whether a Court invested with Small Cause Court powers is governed by paragraph (1) or paragraph (2) of section 203 of the Civil Procedure Code ?

This reference will be without prejudice to any further contentions which may be raised on behalf of the opponents.

The reference was argued before a Full Bench consisting of Jenkins, C. J., Chandavarkar and Beaman, JJ.

P. B. Shingue for the applicants (plaintiffs) :—The question for consideration is whether a Subordinate Judge invested with Small Cause powers is bound to give reasons for his judgment or not ; in other words, whether he is to be regarded as a Small Cause Court so as to bring the case within the first paragraph of section 203 of the Civil Procedure Code.

We submit that he is not to be regarded as a Small Cause Court : *Bhagvan Dayalji v. Balu*⁽¹⁾, *Malhari v. Narso Krishna*⁽²⁾, *Rampratap v. Ganesh Rangnath*⁽³⁾ and *Ramchandra v. Ganesh*⁽⁴⁾. These cases show that a Subordinate Judge invested with Small Cause jurisdiction is still a Subordinate Judge and not a Small

(1) (1888) 8 Bom. 230.

(2) (1887) 12 Bom. 31.

(3) (1884) 9 Bom. 174.

(4) (1898) 23 Bom. 382.

Cause Court. He is therefore bound to give reasons for his findings as the first paragraph of section 203 of the Civil Procedure Code does not govern such Judge's Court, but refers to a Small Cause Court pure and simple.

Sections 32 and 33 of the Provincial Small Cause Courts Act should be read subject to the provisions of section 25 of the Act. The ruling in *Ramchandra v. Ganesh*⁽¹⁾ supports our contention.

It is also desirable in the interests of justice that a Subordinate Judge deciding a case in his Small Cause jurisdiction should give reasons. The Judges in the Presidency Small Cause Courts do not generally give reasons, but in cases decided in those Courts the aggrieved party has the benefit of applying to the Full Court, in which the Judge who decided the case as the Court of first instance sits along with the Chief Judge. This practice appreciates and admits the principle which ought to govern a Court in deciding a case.

A. G. Desai for the opponents (defendants).—He was not called upon to show cause.

The judgment of the Full Bench was delivered by

JENKINS, C. J.:—The question referred to this Full Bench is whether a Court invested with Small Cause Court powers is governed by paragraph (1) or paragraph (2) of section 203 of the Civil Procedure Code.

It has been argued before us by Mr. Shingne that it is paragraph (2) that governs and in support of his proposition he has cited to us *Bhagvan Dayalji v. Babu*⁽²⁾, *Malhari v. Narso Krishna*⁽³⁾, *Rampratap v. Ganesh Rangnath*⁽⁴⁾ and *Ramchandra v. Ganesh*⁽¹⁾. Of these cases however only the last cited is under the Provincial Small Cause Courts Act of 1887; but apart from this they cannot in our opinion affect the decision of this case. The question submitted must, we think, be governed by the sections to which reference was made in the judgment granting the rule.

(1) (1896) 23 Bom. 352.

(2) (1883) 8 Bom. 230.

(3) (1894) 9 Bom. 174.

(4) (1887) 12 Bom 31.

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Section 32 of the Provincial Small Cause Courts Act provides that "So much of Chapters III and IV as relates to the practice and procedure of Courts of Small causes, applies to Courts invested by or under any enactment for the time being in force with the jurisdiction of a Court of Small Causes so far as regards the exercise of that jurisdiction by those Courts."

Here we are concerned with a Court invested by or under an enactment with the jurisdiction of the Court of Small Causes.

Then by section 17 of the Act which is contained in Chapter IV, it is provided that "the procedure prescribed in the chapters and sections of the Code of Civil Procedure specified in the second Schedule to that Code, shall, so far as those chapters and sections are applicable, be the procedure followed in a Court of Small Causes in all suits cognizable by it and in all proceedings arising out of such suits."

Among the sections of the Code of Civil Procedure so specified is section 203, and the practice and procedure of Courts of Small Causes in the matter of judgment is determined in the first paragraph of that section.

Therefore it appears to us irresistibly to follow that a Court invested with Small Cause Court powers is governed by paragraph (1) of section 203 of the Code of Civil Procedure and we answer the question submitted to us in those terms.

Order accordingly.

G. B. R.
