

But, at the same time, technically the Bank had the requisite knowledge, and if they had disclosed it, the whole of the costs thrown away on this abortive taxation would have been saved. I think the proper order is that the Bank pay the costs of this application and the costs of the old taxation and the costs of the applications for review.

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SHAMDASANI
v.
THE CENTRAL
BANK OF
INDIA LTD.
—
Beaumont C. J.

Attorneys for respondents: Messrs. *Payne & Co.*

Proceedings quashed.

N. K. A.

APPELLATE CIVIL.

Before Mr. Justice Macklin and Mr. Justice Sen.

GOPAL TRIMBAKRAO CHANWADKAR AND OTHERS (ORIGINAL DEFENDANTS),
APPELLANTS v. CHIMABAI BHARAT PRABHAKAR LAXMAN NAGPURKAR
AND OTHERS (ORIGINAL PLAINTIFFS), RESPONDENTS.*

1938
June 22

The Bombay Civil Courts Act (Bom. Act XIV of 1869), s. 8†—Suit for account—Plaint valued at Rs. 200—Decree for more than Rs. 5,000—Court of Second Class Subordinate Judge—Appeal against decree—Forum of appeal.

In a suit for an account in which the plaint was valued at Rs. 200 a Second Class Subordinate Judge passed in favour of plaintiffs a decree for Rs. 12,185-7-8.

The defendants having appealed to the High Court, a preliminary objection was taken at the hearing of the appeal, namely, that the High Court had no jurisdiction to hear the appeal, it being an appeal from a decision of a Subordinate Judge of the Second Class :—

Held, that by s. 8 of the Bombay Civil Courts Act, 1869, the appeal lay to the District Court and not to the High Court.

Ibrahimji Issaji v. Bejanji Jansedji,⁽¹⁾ distinguished.

Shet Kavaji v. Dinshaji,⁽²⁾ referred to.

FIRST APPEAL from the decision of D. B. Katpitia, Joint Subordinate Judge, Poona, in Civil Suit No. 840 of 1932.

*First Appeal No. 112 of 1935.

†The section runs as follows :—

“ Except as provided in sections 16, 17 and 26, the District Court shall be the Court of Appeal from all decrees and orders passed by the subordinate Courts from which an appeal lies under any law for the time being in force.”

⁽¹⁾ (1895) 20 Bom. 265.

⁽²⁾ (1897) 22 Bom. 963.

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GOPAL
TRIMBARRAO
v.
CHIMABAI
PRABHAKAR

Suit for account.

In 1932 Chimabai and others (respondents) filed against Gopal and others (appellants) a suit for accounts. Paragraph 11 of the plaint stated as follows :—

“The claim for Court fees for the purposes of account has been valued at Rs. 200, and the claim for jurisdiction of the Court and pleaders’ fee is the same.”

The Joint Subordinate Judge, Poona, who heard the suit passed a decree the terms of which were as follows :—

“Decree against Defendants Nos. 1 to 3 for Rs. 12,185-7-8 and costs and interest at 4½ per cent. from 14th December 1933 till payment. Defendants do bear their own costs. Decree to be drawn up on payment of necessary court fee stamp.”

Defendants appealed to the High Court, valuing the claim at Rs. 10,498-6-7 with a foot-note to the memorandum of appeal saying that “the amount being over Rs. 5,000 the appeal is filed in this Court relying on the ruling in 20 Bom. 265 and 34 Cal. 954”.

H. C. Coyajee, with *S. Y. Abhyankar*, for the appellants.

K. H. Kelkar, for respondents Nos. 1 to 5.

N. M. Hungund for *Safai*, for respondent No. 7.

P. V. Nijsure, for respondent No. 8.

MACKLIN J. This is an appeal from a decree of the Second Class Subordinate Judge of Poona, directing the payment by the defendants of more than Rs. 5,000. The suit was one for an account, and the plaint was valued at Rs. 200.

A preliminary objection has been taken that this Court has no jurisdiction to hear the appeal, it being an appeal from a decision of a Subordinate Judge of the Second Class. Reliance is placed upon s. 8 of the Bombay Civil Courts Act, which appears to conclude the point. There is, however, a decision of this Court, *Ibrahimji Issaji v. Bejunji Jamsedji*,⁽¹⁾ in which it was held that in a case where a claim valued at Rs. 600 was tried by a First Class Subordinate Judge who eventually passed a decree exceeding Rs. 5,000, the appeal lay to the High Court under s. 26 of the Bombay Civil Courts

⁽¹⁾ (1895) 20 Bom. 265.

Act in view of the fact that the subject-matter of the suit exceeded Rs. 5,000 though the claim was originally valued at Rs. 600 only. The reason for the citation of *Ibrahimji Issaji v. Bejanji Jamsetji*⁽¹⁾ in this appeal is that the Court then stressed the subject-matter of the suit as finally determined; and it is argued that by analogy the guiding principle should be the final valuation in this case also. But on no view could s. 8 of the Bombay Civil Courts Act have been applicable to *Ibrahimji Issaji v. Bejanji Jamsetji*⁽¹⁾ (which was decided on an interpretation of s. 26 of the Act), while here we are concerned only with s. 8. Moreover the principle of this decision (though not the correctness of the decision itself) was doubted in *Shet Kavasji v. Dinshaji*.⁽²⁾ That was a case of a decree exceeding Rs. 5,000 being passed by a Second Class Subordinate Judge in whose Court the original relief claimed had been valued at Rs. 130. It was held that an appeal lay not to the High Court but to the District Court in view only of the fact that the decision was by a Judge of the Second Class.

The full bench of the Calcutta High Court in *Ijzatulla Bhuyan v. Chandra Mohan Banerjee*⁽³⁾ came to a decision similar to that of this Court in *Ibrahimji Issaji v. Bejanji Jamsetji*⁽¹⁾. But the local law governing appeals within the jurisdiction of the Calcutta High Court would not necessarily be of assistance in deciding a case governed by the local law of Bombay. We therefore prefer to accept what appears to be the plain meaning of the Bombay Civil Courts Act and to hold that by s. 8 of that Act the appeal lies not to this Court but to the District Court.

The appeal must therefore be returned for presentation to the District Court of Poona. Costs will be costs in the appeal.

Order accordingly.

Y. V. D.

⁽¹⁾ (1895) 20 Bom. 265.

⁽²⁾ (1897) 22 Bom. 963.

⁽³⁾ (1907) 34 Cal. 954, F.R.

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GOPAL
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Macklin J.