

BOMBAY HIGH COURT

Velji Bhimsey

Vs

Bachoo Bhaidas

(N Macleod, Kt., C.J. Kajiji and Kemp, JJ.)

10.03.1924

JUDGMENT

N. Macieod, C.J.

1. The plaintiff brought this action to recover damages for wrongful arrest and imprisonment.
2. The suit was dismissed by Mr. Justice Mulla and on an appeal from that decision, the Judges of the Appeal Court differed. The Acting Chief Justice was of opinion that there should be a decree for the plaintiff for Rs. 100 as damages. Mr. Justice Crump was of opinion that the appeal should be dismissed. Under Clause 30 of the Letters Patent, the opinion of the senior Judge prevailed. Accordingly there was a decree for the plaintiff for Rs. 100. But under Section 22 of the Presidency Small Cause Courts Act, as the plaintiff had recovered less than Rs. 300, no order was made with regard to his costs in the trial Court.
3. The plaintiff has now appealed under Clause 15 of the Letters Patent.
4. The facts of the case as set out in the judgment of the Acting Chief Justice are that the firm of Velji Bhimsey and Co. filed a suit against the present plaintiff and his two minor brothers as surviving members of a joint Hindu family, on a promissory note passed by Bhaidas Vallabhadas deceased a late member of J. the family. A decree was passed in favour of the plaintiffs for Rs. 510-9-6 and coats and it was ordered that in default of payment of the decretal amount by the defendants, the same was to be levied by seizure and sale of the property of Bhaidas Vallabhada deceased that would come to their hands as his heirs and legal representatives.
5. The money was not paid and no execution was levied for a year after the date of the decree. On May 11, 1922, a notice for renewal of judgment under Order XXI, Rule 22, was issued. The defendant did not appear and an order was made on June 24, 1922, in these terms: "Execution to issue against defendant 1". On July 4, the plaintiffs Velji, Bhimsey & Co. applied for a writ of execution against the person of defendant No. 1 and a warrant was issued by the Deputy Registrar

for the arrest of the first defendant who was arrested at 9-30 A.M. on the morning of July 12, 1922, and was produced before the Registrar. The Registrar made the following order: "Decree against the estate of the deceased. No execution by arrest should have been issued against the first defendant's person. Warrant of arrest bad and illegal and not justified by the tenour of the decree," Accordingly the defendant was released.

6. The present defendants seem to base their defence on the order made on June 24, 1922, and contend that under that order, they were entitled to apply for the arrest of the first defendant. But that order was merely a formal order allowing execution to proceed and it cannot possibly be said that it entitled the plaintiffs in the suit to apply for a warrant for the arrest of the first defendant.

7. The plaintiffs in the Small Cause Court suit knew perfectly well that they were not entitled under that decree to apply for the arrest of the defendants. They must have known or ought to have known that the order of June 24, 1922, merely enabled them to proceed with the execution of the decree, and as the decree only entitled them to execute it against the property of Bhaidas in the hands of the defendants, they must be taken to have been aware when they applied for the arrest of the first defendant that such conduct was not justified. The plaintiff, therefore, is entitled to damages for wrongful arrest.

8. The respondents have filed cross-objections and ask to have the damages increased. There was no excuse whatever for the action of the defendants. To arrest a man without any justification is a very serious matter and may have very serious consequences. The consequence of limiting the decree to hundred rupees was that the plaintiff under Section 22 of the Presidency Small Cause Courts Act could not be given the costs of the suit. It has been argued that in a Letters Patent appeal, we are only entitled to consider the point on which the Judges in the Court of Appeal have differed. There is no warrant for that argument. Under Clause 30 of the Letters Patent, the opinion of the senior Judge prevails. Under Clause 15 an appeal lies from that decree, without any limitation imposed upon the powers of the Appeal Court. The whole decree lies open before us, and on the question of damages, we do not think that Rs. 100 awarded, in the circumstances of the case, are sufficient. We increase the damages on the cross-objections of the respondent to Rs. 300, so that, the plaintiff will get his costs throughout.

Kajiji, J.

I Concer.

Kemp, J.

I also concur