

BOMBAY HIGH COURT

Kapurji Magniram

Vs

Pannaji Debichand

(Amberson Marten, Kt., C.J. Murphy, J.)

11.03.1929

JUDGMENT

Amberson Marten, Kt., C.J.

1. This is an application for leave to appeal to the Privy Council against the judgment dated August 7, 1928, of Mr. Justice Fawcett and Mr. Justice Murphy. Mr. Justice Fawcett at the present time is on deputation, and accordingly he is unable to hear the present application.

2. As a result of that judgment, this appellate Court varied the decree of the lower Court to a certain extent in favor of the plaintiff and this resulted in the finding of a sum of Rs. 2,488 due by the defendants to the plaintiff at the date of the suit. The plaintiff, who is the appellant, is however dissatisfied with decision. He wants to appeal to their Lordships against one item which was decided against him, viz., an havala item of Rs. 18,000 referred to in his memorandum of appeal.

3. Now as regards that item both the Courts below were in agreement, and accordingly it is clear that the appeal to the Privy Council, if allowed, would be merely, so far as the plaintiff is concerned, with reference to the havala item of Rs. 18,000, It would also be clear that as regards that item both Courts below were agreed. Under these circumstances, we think that on the true construction of Section 110 of the Civil Procedure Code, it is necessary that as the decree appealed from affirmed the decision of the Court below, on this item, the appeal must involve some substantial question of law before it can be admitted.

4. We have been referred by the appellant to two authorities for the proposition that whenever the appellate Court varies the decision of the lower Court on any point, then ipso facto Section 110 comes into operation, irrespective of the nature of the proposed appeal to the Privy Council. But the cases cited in our opinion establish no such proposition.

5. In *Annapwrnabai v. Ruprao*¹ the appeal to the Privy Council was limited to the question of a

maintenance allowance. There the Court of first instance had decreed to the widow Rs. 800 per annum as maintenance; but the appellate Court increased it to Rs. 1,200 per annum. Consequently the argument of Sir George Lowndes at p. 320 is quite correct, viz., "The Appellate Court did not affirm the decree of the first Court, but varied it; consequently it is not material under Section 110 whether any substantial question of law is involved."

6. The other case cited to us is that of *Bhagwan Singh v. The Allahabad Bank, Limited*² There it will be seen that the Court of first instance decreed the plaintiff's claim for about Rs. 41,000. On appeal the High Court modified the decree of the Court of first instance by nearly Rs. 8,000, It was there held that as the decree of the lower Court had been varied, there was no necessity for there to be a substantial question of law, provided the amount involved was over Rs. 10,000.

7. Turning next to see whether any substantial question of law arises here, the dispute about the havala item of Rs. 18,000 appears to us to be a mere question of fact. It is alleged that a question of law arises, because the learned Judges drew attention to the fact that there was no chit and it is contended that in certain circumstances no chit would be likely on a havula transaction of that sort. In my opinion that is not a substantial question of law, even if it can be said to be a question of law at all, which I do not think it is.

8. Under these circumstances I would dismiss the present application.

Murphy, J.

9. I agree, I think there is no substantial question of law involved in the proposed appeal, and that otherwise the appeal does not come within the rule.

Cases Referred.

1(1924) L.R. 51 I.A. 319

2(1920) I.L.R. 43 All. 220