Supreme Court of India
Jasraj Inder Singh vs Hem Raj Multan Chand on 14 February, 1977
Equivalent citations: 1977 AIR 1011, 1977 SCR (2) 973
Author: V Krishnaiyer
Bench: Krishnaiyer, V.R.

PETITIONER:
JASRAJ INDER SINGH

Vs.

RESPONDENT:
HEM RAJ MULTAN CHAND

DATE OF JUDGMENT14/02/1977

BENCH:
KRISHNAIYER, V.R.
BENCH:
KRISHNAIYER, V.R.
GUPTA, A.C.

CITATION:
1977 AIR 1011 1977 SCR (2) 973
1977 SCC (2) 155
CITATOR INFO :
R 1979 SC 102 (14)
R 1979 SC1436 (3,5)

ACT:
Partnership Act--Rendition of accounts--Plaintiff had two shops at different places--Defendant had dealings at both places--Plaintiff claimed account of one shop without set off from the other--If set off permissible.
Jurisdiction of High Court--Remand order--Nature of--Lower Court, if bound by directions in remand order.

HEADNOTE:
The appellant (Plaintiff) had two shops, one in his village and the other in a city. The respondent (defendant) had dealings of various kinds with the appellant at both the places. The plaintiff filed a suit claiming a certain sum representing the net balance due to him from the respondent (defendant) on the village account. The defendant on the other hand claimed that, had the city account been taken into account, it was he who would be entitled to a larger sum from the plaintiff. The plaintiff claimed that the accounts of the village and city should not be mixed up. The trial Court held that, though the shops were located at different places, they were owned by the same person and in

equity and law, set off was Permissible and it accordingly granted a decree.

On the plaintiff's appeal, the High Court held that rendition of city accounts was illegal and remanded the case to the trial Court. On remand, the trial Court held that while the plaintiff was right in his demand vis-a-vis the village shop the defendant was entitled to a certain sum from the city account and awarded a decree to the plaintiff m respect of the net balance.

In appeal, the High Court held that after remand the trial Court had no jurisdiction to look into the city accounts as a whole and on account of a misapprehension of the observations of the remand order, an illegal decree had been passed in favour of the plaintiff.

Restoring the trial Court's order,

HELD: The true nature of the action in this case was a suit on account to: the sum due on striking a balance. That itself was the cause of action. [981E]

1. The trial Court's view that the entirety of account in the two shops could be viewed as a composite one, was sound. The parties are the same. There was only one person who owned the two shops and it is wrong to construe the situation as if there were two juristic entities. The defendant who dealt with the plaintiff in the two shops was the same person. The dealings were either in one or the other shop. The artificial dissection of the transactions could not square up with the reality of the situation. [981C-D]

In the instant case there was no misapprehension on the part of the trial Court of the observations made by the High Court in its remand order. While directing remand, the High Court ordered that issue No. 6, namely, whether on making an account of the two shops of the plaintiff the defendants were entitled a set off and thereafter to certain sums, should be decided by the trial Court. The trial Court naturally took the view that the High Court having ordered an adjudication of the issue, vested it with jurisdiction to enquire into the city accounts in toto and pass a decree. If the village and city accounts had to be gone into, the decree passed was correct. [980G-H]

2. Order 8, rule 6 CPC deals with a specific situation and does not prevent the Court. where the facts call for wider relief, from looking into the accounts in both places to do ultimate justice between the parties. [981-H]

974

3. (a) After remand by the High Court, the subordinate Court is bound by the direction of the High Court, the same High Court hearing the matter on a second occasion or any other Court of co-ordinate authority hearing the matter, cannot discard the earlier holding. Both a finding in a remand order cannot bind a higher Court when it comes in appeal before it.-[982A-B]

(b) The remand order by the High Court is a finding at

an interreed are stage of the same litigation. When it came to the trial Court and escalated to the High Court, it remained the same litigation. The appeal before the Supreme Court is from the suit as a whole and, therefore, the entire subject matter is available for adjudication before the Supreme Court. [982C-D]

(c) The circumstance that the remanding judgment of the High Court was not appealed against, assuming that an appeal lay therefrom, cannot preclude the appellant from challeng- ing the correctness of the view taken by the High Court in that judgment. [982E]

Lonankutty v. Thomman [1976] 3 S.C.C. 528, followed.

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeals Nos. 2208, 2209 of 1968.

From the Judgment and Decree dated the 10th/llth August. 1965 of the Bombay High Court (Nagpur Bench) in First Appeal Nos. 120 and 123 of 1965.

S.T. Desai, D.N. Mishra and B.N. Mohta, for the appellant M.N. Phadke, .4. G. Ratnaparkhi, for respondent. The Judgment of the Court was delivered by KRISHNA IYER, J.--The two appeals, measured by their legal merits or factual dimensions, may. not justify their longevity from June 23, 1949 to February 1977--the former being the date of birth of the suit and the later the termi- nation, at long last, of the cases in this Court. The subject matter is a relatively small money claim which, perhaps, is less than the amount each side has spent on the forensic scrimmage. Before, we narrate the facts and discuss the law, we permit ourselves a pensive reflection about our processual justice. If we (law-makers and law- yers) tarry any longer to forge a speedy and radical juris- prudence of remedies-in-action, the long quest for the fruits of rights may tempt suitors into the traditional quagmire of processual legalistics where from extrication may prove an expensive futility. The story which hopefully comes to. a close with this judgment, among many others like this, bears testimony to the crying need for serious reform--not oblique by-pass---of the court-system by an aware legislature, lest the considerable social cost of pursuing judicial remedies stultify and disenchant seekers of legal justice. The facts, when unfolded, will validate this obiter intended to alert the law-maker. The High Court, thanks to the then rule of valuation under Art, 133 (1)(a) of the Constitution, granted a certif- icate of fitness. The appellant plaintiff, as kartha of a joint Hindu family, Was running a business in the name and style of Jasraj Inder Singh with two shops, one in Khamgaon and the other in Bombay. (The trade name for the Bombay Shop was slightly different.) The respondent-defendant had been having dealings with the plaintiff at both places between October 1947 and May 1948. The accounts between the parties fluctuated from time to time, since deposits, advances, withdrawals and entrustment of silver, castor, cotton and the like for sale as agents and crediting the prices in the accounts were a running feature of the mutual dealings. The plaintiff isolated the transactions which took place in Khamgaon and brought a suit claiming a sum of Rs. 11,401-7-9 which represented the net balance due on the Khamgaon khata to him from the defendant on May 12, 1948. Interest was also demanded on an alleged agreed rate. It is noteworthy

that the plaintiff's initial folly as Shri Desai, for the appellant frankly admitted, was in excluding from the suit claim the amounts due one way or the other from the Bombay branch of the business. The contracting parties were identical, the dealings were simi- lar and on any fair basis either could get from the other the net amount legally due from both the shops together. But legal sense and commonsense were abandoned by the plaintiff out of the oblique motive of claiming a larger sum than would be due in case a joint balance was struck. This dubious device, as will be seen presently, has backlashed on the plaintiff whose disaster in the High Court has been largely courted by this motivated cleverness. To revert to the litigative narrative, the defendant urged in defence that the demand was untenable since he bad deposited six bars of silver with the Khamgaon shop of the plaintiff to be sold through his Bombay branch and if the sale proceeds thereof were taken into account in the Khamgaon khata a larger sum would be due to him. (We bypass, for the time being, the fight over this claim being a set-off under order VIII, rule 6 C.P.C., or a counter-claim in the nature of a substantive relief for the balance). This counter-claim was met by the plaintiff in an additional pleading wherein he urged that the sale of silver bars was a matter for the Bombay shop and should not be mixed up with the Khamgaon dealings which were the basis of the action. What falls for regrettable comment is that even at this stage the plaintiff did not invoke the obvious argument that the Khamgaon and the Bombay shops both belonged to the same owner and since the transactions were between the same parties (in differ- ent places though) when a suit for (or on) final accounts were filed, all the items in the twin places should figure in the resultant decree. If this straight-forward plea were taken the facts tend to show the plaintiff would still have got a decree, may be for a lesser sum. Oftentimes, obdurate legal obscruantism of litigants, leads to protraction of proceedings, projection of intricate procedural punctilios and the phyrric processual victory forensically won being a potent source of perverting truth, draining resources and undoing justice. This sombre scenario of the case we are deciding proves how on account of the correct curial ap- proach being blinded by the cantankerousness of the plain- tiff, conveniently concurred in by the other side, revision and appeal, remand and appeal, and attendant decades of delay and disproportionate litigative spending by both and two friendly businessmen, thanks to this feud, turning into foes, followed at once a disaster to both and detriment to the business community. And some pre-trial conciliation activism by the court at an early stage might well have sorted out the dispute, bettered their relations and pre-empted this cock-fight. Doing justice is a noble behest which blesses all; deciding the lis within a judicative pyramid, provocative of appeals and revisions, bleeds both and unwittingly incites the. bitter persistence in the struggle to win (and lose 1). We are courts of justice guided by law and the signature tune of the indicature is Fiat Justitia. We gently suggested, in this spirit, whether the parties would be disposed to com- pose their quarrel. Counsel as often happens, constructive- ly helped, but the purchase of peace at this late stage was difficult and we gave up. Of course, adjudication on the .law and the facts cannot and shall not be influenced by this extra-curial excursion.

We pick up the story of the suit where we left it. In the dog-fight that followed, a question of court-fee was raised and decided. That was taken up to the High Court and returned. A preliminary decree for accounts of the Bombay khata was passed and that too leapt to the High Court re- sulting in a remand, fresh issues and so on. Then a decree was passed and both sides challenged it in appeal and crossobjections and the last lap of the tiring race is this court where the vanquished plaintiff is the appellant. We proceed to decode the justice and the law of the cause. We may state that the

plaintiff's obstinate attitude in treating the Bombay shop and Khamgaon shop as two different persons each being entitled to sue the defendant without reference to the amounts due to the latter from the former in inter-connected business dealings is a legal fallacy and cute perversity. However we may repeat that the defendant also proceeded on that 'shop autonomy' theory but only urged that the silver bars were wrongfully omitted from the Khamgaon khata. Shops are not persons although suits may be filed in trade names. The trial court took a commonsense view in commingling the business account of the same par- ties. This was good law. A plurality of shops owned by the same person does not proliferate into many shop-persons. At an intermediate stage of the many involved interlocutory skirmishes, the plaintiff did allege:

> "The alleged silver bars were sold by the defendant Suwalal through the said Bombay shop and naturally the sale proceeds of that quantity of silver are credited in the defend- ant's Khata in the Bombay shop. The plain- tiff, therefore in reply to the defendant's claim of Rs. 17000/- has to file the extracts of accounts of the Bombay shop to put the full picture of transactions before the court. As the Bombay shop shows the balance of Rs. 4535-12-0 as due to the defendants, the said fact has been so mentioned by the plaintiff in his statement."

In passing, we may mention that the counter-claim led to a demand for court-fee and the High Court affirmed this order but reduced the sum on which such fee was payable. Later, issues were framed by the trial Court which reflected the integrated nature of the dealings between the two par- ties in the shops at Khamgaon and Bombay. The learned District Judge, not obsessed by the wrong-headed pleadings, took the view that the shops, though located at different places, were owned by the same family and the claims were so inter-connected that, in equity and law, set off was permissible and the net sum due to the plaintiff--less than what he had sued for--should be de- creed. We may mention the relevant issues framed at the first round even here since we may have to refer to them later when dealing with a supportive submission of Shri Phadke for the defendant. Issues 5 and 7 may be reproduced here:

> "5. Whether the Bombay & Khamgaon shops owned by plaintiff's partners are so connect- ed with each other that a composite account of the entries in the two shops can be made by the Defendants ?
>
> * * * *
>
> 7. Whether on making an account of the two shops of the Plaintiff of Bombay and Khamgaon, the Defendants are entitled to a set-off thereafter to a sum of :--
>
> (a) Rs. 17,000/- as claimed by the Defendants or to a set-off.
>
> (b) Rs. 4,535-12-0 as stated by the Plaintiff ?"
>
> Later, amended pleadings led to amended issues of which issues 4 to 6 are meaningful and are set out below with the findings thereon; "4. Whether the Bombay

and Khamgaon shops owned by plaintiff's partners are so connected with each other that a composite account of the entries in two shops can be made by the defendants ?

--Yes

5. (a) Whether a sum of Rs. 44,697/10 is debited to the defendants in the account of the Bombay shop ?

--Yes .

(b) Are these entries proper and correct ?

---Yes.

(c) And in time ?
---Yes.
6. Whether on making an account of the two

shops of the plaintiff of Bombay and Khamgaon the defendants are entitled to a set-off and thereafter to a sum of--

(a) Rs. 17,000/- as claimed by the defendants or to a set off
--No.

(b) Rs. 4,535/12/- as stated by the plaintiff ?--Yes.

The plain fact emerges that the two parties were having dealings with each other, that the dealings in Khamgaon and Bombay were inter-related and not totally different transac- tions, dissociated in nature and divorced in period. The trial judge treated the totality of transactions as a com- posie account and the suit as one on accounts. He ' granted a decree on these terms "The Plaintiff shall render an account of the Bombay shop to the defendant, who shall be entitled to falsify and surcharge. A preliminary decree for accounts under order 20, rule 16 CPC shall be drawn up. After making an account and the necessary adjust- ment, the eventual liability inter se shall be determined. Costs shall abide the result." The plaintiff appealed and the defendant filed cross-objections. After a 'study of O.8, r. 6 CPC, the High Court felt that the Bombay accounts should not have been gone into and the defendant's claim by way of set off alone was available for adjudication. Since it had been held that the silver bars were an item in the Khamgaon shop accounts, the direction for rendition of the Bombay account was illegal. The Court observed:

"The learned lower Court was thus in error in converting the claim of set off into a claim for rendering accounts by the plain- tiff to the defendants in respect of the dealings made in the Bombay shop. The lower Court was bound in terms of Order 8 Rule 6, to treat this claim of set off as a money claim in respect of the ascertained amount and to find whether such amount was due to the defendants from plaintiff. If such

> amount was found due to the defendants from the plaintiff, then the defendants would be entitled to set off that amount as against the claim of the plaintiff. The decree as passed by the learned lower Court will, therefore, have to be set aside. It is necessary for the trial Court to decide as to, what amount was due to the defendants from the plaintiff. The issue was framed and parties have led evidence. The tower Court shall decide the issues left undecided for final decree. The learned lower Court will decide whether it is proved on the facts that the defendants have to recover Rs. 17,000/- from the plaintiff, and if so found, will adjust the eventual liability inter se, and if it is found that any of the parties has to recover any amount from the other, a decree should be accordingly passed... The case is, therefore, sent back to the trial Court who will decide as to what amount is due to the defendants from the plaintiff. Thereafter whatever amount is found due to the defendants shall be adjusted towards the proved claim of the plaintiff in respect of the deposits in the Khamgaon shop. The Court shall pass a decree in favour of the party in whose favour the. balance will be found due."

It is true that the High Court's observations inhibited the Bombay accounts being generally reopened but when the case was remanded for fresh decision, the trial Court, apparently pressed by the injustice of amputating the composite deal- ings, went on to hold that while the plaintiff was right in his demand vis-a-vis the Khamgaon Khata, the defendant was entitled to a sum of Rs. 4,535/12/- from the Bombay accounts and awarded to the plaintiff a decree for the net balance of Rs. 7,464/4/-. This he did in purported compliance with the High Court's direction. He was bound by it and to act contrary to a higher court's order is to be subversive of the discipline that the rule of law enjoys in our hierarchi- cal justice system. The trial Judge, in recording findings on all the issues, did a comprehensive investigation of the Bombay accounts since the silver bars, although entrusted to the Khamgaon shop,. were sold in Bombay and rightly credited in the Bombay Khata.

To pick out a single true item which had been inextrica- bly got enmeshed in the skein of entries and cross-entries was to tear up the fabric of the whole truth. In a finer sense, harmony is the beautiful totality of a whole sequence of notes and the concord of sweet sounds is illtuned into disjointed discord if a note Or two is unmusically cut and played. Truth,' like song, is whole and half-truth can be noise: Justice is truth, is beauty and the strategy of healing injustice is discovery of the whole truth and harmo- nising human relations. Law's finest hour is not in medi- tating on abstractions but in being the delivery agent of full fairness. This divagation is justified by the need to remind ourselves that the grammar of justice according to law is not little litigative solution of isolated problems but resolving the conflict in its wider bearings. Let us pick up the threads of the litigation. Even the interrogatories served and the answers elicited made it clear that while there were two shops in two different venues, the dealings between the plaintiff and the defendant were closely connected--rather, integrated. That furnished the justification for the trial Judge to examine the Bombay accounts between the parties and he came to the factual conclusion: 'I see absolutely no reason to doubt the cor- rectness of any of the entries in these extracts of plain- tiffs account book (exht. P-23). I answer issues 5 (a) and

(b) in the affirmative. Ex. P. 23 contains on the credit side the sale proceeds of defendant's silver which was sold in Bombay. A plea had been feebly raised by the defendants that some of the items in the Bombay account were barred by limitation and the plaintiff could not claim credit for them. This plea was also examined by the trial Court and negatived with the observation: 'I hold that in view of the credit and debit entries in Ex. P. 23 all the debit entries were within time at the material period. I answer issue 5(c) in the affirmative'.

Thus there was no denial of fairness in the trial be- cause the Bombay accounts in their entirety were put in issue, and focused on by both sides in the evidence followed by appropriate findings. The upshot of this process was, in the language of the trial Court: 'Thus all things consid- ered plaintiff is entitled to Rs. 12,000/- minus Rs. 4,535/12/- i.e., Rs. 7,464/4/- from the defendants'. The court denied costs to both since neither came with clean hands. Both sides were guilty of not playing cricket and, in this game of over-reaching each other, the Court's penal- ty is denial of costs. This rule was adopted by the trial Court.

When the case went up in appeal, the High Court harked back to the order of the Nagpur Bench in the same case in a revision filed against the order of payment of court-fee for the counter-claim. It is true the High Court had then held that only a specific sum relating to the sale of silver bars was the basis of the counter-claim and the entire accounts of the Bombay shop was not at large before the Court. The High Court referred again to the decree first passed by the trial Court to render an account of the Bombay shop to the defendant on the footing that the accounts in Bombay and Khamgaon were so interconnected as to warrant a composite understanding of the entries in the two shops. This ap- proach of the trial Court in passing a preliminary decree for rendition of accounts was set aside by the High Court in appeal at the first round on the score that the plea the defendant was confined to one of set off under O.8, r. 6 Therefore, argued the High Court, "A mere liability to account cannot be an answer by way of set off to the claim of the plaintiff. In fact, the defendants in their written statement, claimed by way of set off such ascertained sum of money which, according to, them, was Rs. 17,000/-. It is because such ascertained sum was claimed by way of set off that the claim was entertained for investigation by the lower Court.

Therefore, the only question that was before the learned lower Court was to find out what amount was due to the plaintiff from the defendants in respect of the deposits of amounts made in the Khamgaon shop and also to find out what amount was due to the defendants from the plaintiff in respect of the silver transactions made in the Bombay shop. The question of rendering accounts by the plain- tiff to the defendants could not arise on the facts of the case."

The remand order was undoubtedly binding on the lower Court and had directed a limited enquiry and passing of a decree 'in favour of the party in whose favour the balance will be found due'. The High Court held that after the remand the learned trial Judge had no jurisdiction to look into the Bombay accounts as a whole and on account of the misapprehension of the observations of the remand order an illegal decree had been passed in favour of the plaintiff. What was the misapprehension about? While directing a remand, the High Court ordered that issue 6 should be decid- ed by the trial Court and this issue has been set out earli- er by us. Naturally, the trial Court took the view that the High Court, having ordered an adjudication of issue no. 6, vested it with the

jurisdiction to enquire into the Bombay accounts in taro and pass the decree that woe have already indicated, viz., a deduction of the surplus due to the defendant from the Bombay accounts from the amount due to the plaintiff from the defendant according to the Khamgaon accounts. The arithmetic is not in dispute and, indeed, while both the counsel have taken us through the evidence in the case we are satisfied that if both the Khamgaon and the Bombay accounts had to be gone into, the decree passed was correct both regarding the quantum and on the issue of limitation. This we affirm because Shri Phadke had feebly pressed before us that in any case his client should be given a fresh opportunity to make out his case regarding the various entries in the Bombay Khatha. We are not satisfied that the defendant has not had a full say and we are therefore disinclined to accede to this request.

The surviving question before us is whether it was in order for the trial Court to have investigated the accounts in the two shops together as if they were transactions between the same two persons or whether the remand order of the High Court at the first round had lettered the trial Court's hands in doing justice in this comprehensive way. The suit is for a sum due on accounts. The parties are the same. There are two shops belonging to the same owner. The return of the income from the two shops, for income-tax pur- poses, is a consolidated one. In short, there was only one person who owned two shops and it is wrong to construe the situation as if there were two juristic entities or person- al. Secondly, the defendant, who dealt with the plaintiff in the two shops, was the same person. He had no dual charac- ters to play. The dealings were either in one or in the other shop. They were business dealings between two busi- nessmen, during the same period, and even inter-related, to such an extent that sometimes advances were made from one shop and realisations were made in the other shop. In short an artificial dissection of these transactions could not square up with the reality of the situation. Shri Phadke urged that one contract was one transaction and a set of contracts need not be necessarily brought up in the same action between the same parties. We consider that the true nature of the action here is a suit on accounts for the sum due on striking a balance. That itself is the cause of action. Such a suit is not unfamiliar and such a cause of action may be made up of various minor transactions. Viewed at the micro-level each may be a single contract. But viewed at the macro-level as a suit on accounts, it is a single cause of action. If the present action is one on accounts and if the various entries in the two shops at Khamgaon and Bombay involve transfusion of funds and goods, there is no reason why we should not accept as sound the approach made by the trial Court that the entirety of accounts in the two shops should be viewed as a composite one. It reduces litigation; it promotes the final financial settlement as between the parties it has the stamp of reali- ty. Otherwise it would be an odd distortion to grant a decree for the plaintiff for, say Rs, 10,000/- on the strength of the Khamgaon accounts while he owes.the defend- ants Rs. 50,000/- according to the Bombay accounts. Order 8, rule 6, CPC deals with a specific situation and does not prevent the Court, Where the facts call for wider relief, from looking into the accounts in both places to do ultimate justice between the parties. Procedure is the. handmaid and not the mistress of justice and, in this spirit, the trial Court's adjudication cannot be faulted.

Be that as it may, in an appeal against the High Court's finding, the Supreme Court is not bound by what the High Court might have held in its remand order. It is true that a subordinate court is bound by the direction of the High Court. It is equally true that the High Court, hearing the matter

on a second occasion or any other court of co-ordinate authority hearing the matter cannot discard the earlier holding, but a finding in a remand order cannot bind a higher Court when it comes up in appeal before it. This is the correct view of the law, although Shri Phadke controverted it, without reliance on any authority. Nor did Shri S T Desai, who asserted this proposition, which we regard as correct, cite any precedent of this Court in support. However, it tran- spires that in Lonankutty v. Thomman(1) this proposition has been affirmed. Viewed simplistically, the remand order by the High COurt is a finding in an intermediate stage of the same litigation. When it came to the trial court and esca- lated to the High Court, it remained the same litigation. The appeal before the Supreme Court is from the suit as a whole and, therefore, the entire subject matter is available for adjudication before us. If, on any other principle of finality statutorily conferred or on account of res judicata attracted by a decision in an allied litigation the matter is concluded, we too are bound in the Supreme Court. Other- wise, the whole lis for the first time comes to this Court and the High Court's finding at an intermediate stage does not prevent examination of the position of law by this Court. Intermediate stages of the litigation and orders passed at those stages have a provisional finality. After discussing various aspects of the matter, Chandrachud J., speaking for the Court in Lonankutty (supra) observed: "The circumstance that the remanding judgment of the High Court was not appealed against, assuming that an appeal lay therefrom, cannot preclude the appellant from challenging the correctness of the view taken by the High Court in that judgment." The contention barred before the High .Court is still available to be canvassed before this Court when it seeks to pronounce finally on the entirely of the suit. Shri Desai cited before us the decision of the Bombay High Court, in Ratanlal(2), as Fart of his argument. There- in it is laid down that a remand order will not operate as res judicata and preclude the remanding court from reopening it at the subsequent stage of the same continuing proceeding when the law underlying the remand order is differently interpreted by a larger Bench or by the Supreme COurt. Such an order or finding recorded at the stage of remand happens to be interlocutory and cannot terminate the cause finally so that when the litigation comes up before the remanding court, the previous remand order would ordinarily be conclu- sive and binding like any other interlocutory order. But exceptions there are where a re-consideration of such an order is necessitated either by discovery of fresh matter or of unforeseen development subsequent to the order or change of law having retrospective effect. We do not make any comments on this argument of Shri Desai and leave it at that.

(1) [1976] 3 S.C.C. 528.

(2) (1975) Mah. L.J. 65.

The trial Court's judgment has therefore to be restored. It accords with justice and with law. There will thus be a decree in favour of the plaintiff in a sum of Rs. 7,464/4/-. Even truthful cases urged through unveracious forensic processes must be visited with the punitive curial displeas- ure of denial of costs and discretionary interest. Here the plaintiff sued for a sum of Rs. 12,000/- and gets a decree for less than Rs. 8,000/-. We deny him costs for the amount decreed in his favour but allow costs for the defendant to the extent he has succeeded (viz., for Rs. 4,535/12/-). The equities of the situation are such, especially having regard to the long lapse of time and. the dubious attitude of the plaintiff and litigative prolixity, that we do not award interest on the amount decreed at all.

P.B.R. Appeal al-

lowed.