

(1931) 09 BOM CK 0018

In the Bombay High Court

Case No : O.C.J. Appeal No. 15 of 1931 and Suit No. 4244 of 1924

Chunilal Omkarmal

APPELLANT

Vs

Chaturbhuj Piramal

RESPONDENT

Date of Decision : 28-09-1931

Acts Referred:

Citation : AIR 1932 Bom 206 : (1932) 34 BOMLR 17 : (1932) ILR (Bom) 349

Hon'ble Judges : Rangnekar, J; John Beaumont, J

Bench : Division Bench

Final Decision : Allowed

Judgement

John Beaumont, Kt., C.J.—This is an appeal from a decision of Mr. Justice Kemp and the suit arises in this way. On May 14, 1924, the plaintiffs filed a suit against one Shankarrao Gavde to recover a sum of approximately two lacs of rupees. On May 15, the plaintiffs obtained a warrant for attachment before judgment of the moneys due by the defendant in this action (who is and whom we will refer to as "the appellant") to Shankarrao. On May 16, the order for attachment was served on the appellant. On September 3, the plaintiffs obtained a decree against Shankarrao for the amount claimed in their suit. On September 25, the prohibitory order of attachment was continued and leave was given to the plaintiffs to file a suit against the appellant to establish their claim to the moneys attached. On December 2, the present suit was filed accordingly and in their plaint the plaintiffs ask for a declaration (a) that the defendant was indebted to Shankarrao in a sum of Rs. 2,00,000 or thereabouts when the warrant of May 15, 1924, was served upon the defendant and that the plaintiffs are entitled to payment of the said sum, and (b) that the defendant may be ordered to pay to the plaintiffs the sum of two lacs of rupees or such other sum as may be found due by them to the said Shankarrao.

2. In his written statement the appellant alleged that he carried on business at Indore and Bombay and that he resided in Indore and was a subject of the Indore State. He then set out certain notices and orders given and made by the

authorities of the Indore State and he alleged that Shankarrao had, prior to April 17, 1924, seen the appellant at Indore and agreed that the balance to the credit of Shankarrao in the books of the appellant's Bombay firm should be transferred to the Indore books. The appellant then submitted that the notices and orders of the Indore State therein-before referred to were acts of State such as were sufficient in law to discharge liability of the appellant to Shankarrao. This last allegation was added by way of amendment on November 10, and issue No. 4 was founded on such amendment.

3. In the Court below the trial seems to have proceeded very largely upon the allegation of fact made by the appellant that Shankarrao had consented to the moneys owing to him in the books of the appellant's Bombay shop being transferred to the Indore account. The learned Judge disbelieved the evidence on this point and held that no consent had been given by Shankarrao, and this finding of fact has not been challenged in this Court. It would appear inherently improbable that Shankarrao consented to what would have been the first step in the process of forfeiting his property. In this Court the way the appellant puts his case is this: Shankarrao and the appellant were both subjects of the Indore State; the debt due from the appellant to Shankarrao was locally situate in Indore; the acts of the Indore State authorities amounted to a seizure of this debt on or prior to May 15, 1924, and this Court cannot inquire into the validity of the acts of the Indore State, For the proposition of law on which he relies the appellant cited the cases of *Aksionairnoye Obschestvo A. M. Luther v. James Sagor & Co.* [1921] 3 K.B. 532 and *Princess Paley Olga v. Weisz* [1929] 1 K.B. 718 We think that these cases establish the rule which is very clearly stated by Lord Justice Russell (as he then was) in the latter case. He says (p. 736):-

This Court will not inquire into the legality of acts done by a foreign Government against its own subjects in respect of property situate in its own territory.

4. In order to bring into operation this rule of law the appellant must prove (1) that he and Shankarrao at the material dates were subjects of the Indore State, (it) that at such dates the property alleged to have been seized, namely, the debt due from the appellant to Shankarrao, was situate in Indore, (iii) that the alleged acts amounted to a seizure of the debt, and (iv) that such acts were the acts of the Indore Government.

5. The first point is not in dispute and the arguments have been concentrated mainly upon the second question relating to the situs of the debt. The contention of the respondents is that the "debt seized by the Indore State was not property situate within that State, The question as to the situs of a chose in action, which has no tangible existence, is always liable to occasion difficulty, but certain rules have been laid down in England for the guidance of the Courts. The general prima facie rule, and the origin of it, are, we think, very clearly stated by Lord Justice Atkin (as he then was) in *New York Life Insurance Co. v. Public Trustee* [1924] 2 Ch. 101 He says this (p. 119) :-

A debt, or a chose in action, as a matter of fact, is not a matter of which you can predicate position; nevertheless, for a great many purposes it has to be ascertained where a debt or chose in action is situated, and certain rules have been laid down in this country which have been derived from the practice of the ecclesiastical authorities in granting administration, because the jurisdiction of the ecclesiastical authorities was limited territorially. The ordinary had only a jurisdiction within a particular territory, and the question whether he should issue letters of administration depended upon whether or not assets were to be found within his jurisdiction, and the test in respect of simple contracts was : Where was the debtor residing ? Now, one knows that, ordinarily speaking, according to our law, a debtor has to seek out his creditor and pay him ; but it seems plain that the reason why the residence of the debtor was adopted as that which determined where the debt was situate was because it was in that place where the debtor was that the creditor could, in fact, enforce payment of the debt.

6. The general proposition that the situs of a simple contract debt is the place where the debtor is residing at the material date is established by the cases of *Attorney-General v. Bouwens* (1838) 4 M.& W. 171 and *Commissioner of Stamps v. Hope* [1891] A.C. 476. Certain modifications upon that rule have been established to suit modern commercial practice. In *Rex v. Lovitt* [1912] A.C. 212 where a deceased person had an account at a branch in New Brunswick of a bank the head office of which was in London, it was held that the local situation of the moneys due on the account was New Brunswick. We think that the real basis of the decision of the Privy Council in that case was that in such a case there must be taken to be an implied contract that the customer should look to the branch bank for payment and should only be entitled to have recourse to the head office in case the bank refused payment. That case really turns upon banking practice. In the case of *New York Life Insurance Co. v. Public Trustee*, referred to above, the question of the locality of a debt for the purposes of the Peace Treaty Order fell to be decided. The debt in that case was money due under a policy of insurance from a company which had its central office and the bulk of its assets in New York, but a branch office in London. It was held in that case that a corporation might have a dual residence, and that the insurance company resided both in New York and in London, and that it was permissible to look at the terms of the contracts to determine at which residence the debt should be recoverable. The Court, therefore, did not in any way depart from the general rule that the locality of a debt is the place of residence of the debtor, but it held that a corporation might have more than one residence.

7. In the present case we are satisfied on the evidence that at the material date, viz., the date of the alleged seizure of the debt by the Indore State to which we will refer presently, the residence of the appellant, who was the debtor, was Indore. Mr. Coltman on behalf of the respondents has argued that inasmuch as the contracts under which the debt arose were with the appellant's Bombay branch we ought to hold that there was an implied contract that the money should be paid in Bombay and that the debt, therefore, was locally situate in

Bombay. This was the view which appealed to the learned Judge. But in our view having regard to the facts that the appellant was the sole proprietor both of his Indore and his Bombay businesses, that the head office was in Indore, and that Shankarrao and the appellant both resided in Indore, there is no ground for supposing that the parties impliedly contracted that the money should only be paid in Bombay. The evidence of the appellant in his re-examination was that Shankarrao made payments at Indore in respect of the Bombay firm and that payments to Shankarrao in respect of the Bombay business before May 1924 were sometimes made at Indore, though he no doubt says in cross-examination that Shankarrao's transactions with Bombay firm were entered in Bombay books and could not be transferred to Indore books. As against this the defendant's Bombay munim says that Shankarrao's account could be transferred without his consent. It seems to us that there is no reason in this case for departing from the general rule that the local situation of a debt is the residence of the debtor. Mr. Coltman has argued strenuously that this question of the situs of the debt was not really considered in the Court below, and that if it had been, he could have produced evidence to show that the residence of the appellant was not Indore. No doubt in the Court below the appellant based his case mainly on the issue of fact, on which he failed, but we think that the proposition of law on which he relies in this Court was plainly raised by para. 10(a) of the written statement, and the fourth issue, and that it must have been apparent to his legal advisers that the situs of the debt might be a material matter. The judgment of the learned trial Judge shows that that point was raised. In the evidence of the appellant he states that he lives in Indore and that the head office of his business is there and in cross-examination he says that he has been living in Indore State for many years and carrying on business there. Moreover, the documents to which I am about to refer make it perfectly plain that at the material dates in April and May, 1924, he was in Indore. We do not think there is any substance in the contention that this evidence might have been challenged.

8. We now come to the next question, viz., whether the acts relied on by the appellant amount to a seizure of the appellant's debt due to Shankarrao before notice of the plaintiff's attachment was received on May 16. On April 12 (all the dates being in the year 1924) the Private Secretary to the Prime Minister to H. H. the Maharajah Holkar instructed the Inspector General of Police, Indore, to attach certain specified properties of Shankarrao and any other properties, funds or rights belonging to Shankarrao, On April 17, the Inspector General of Police gave a notice to the appellant described as "residing in Bada Sarafa, Indore" stating that the property and rights of Shankarrao had been attached and requiring the appellant to produce the sum of nearly two lacs of rupees claimable in the name of Shankarrao at the appellant's Bombay shop within eight days and deliver accounts within four days to the Prime Minister. The appellant acknowledged the notice and wrote to the Prime Minister (describing himself as "residing in Bada Sarafa") asking for fifteen days in which to deliver accounts. On April 30, the Inspector General of Police wrote to the Prime Minister stating that

the amount due from the appellant to Shankarrao was Rs. 1,44,420-9-6, and on May 1, the Prime Minister directed that this balance should be recovered from the appellant and deposited in the Huzur Treasury pending orders as to its ultimate disposal. The Prime Minister also directed that the only outstanding transaction between the appellant and Shankarrao which was in linseed should be closed. On May 2, the Inspector General of Police wrote to the appellant requiring him to remit the amount to the Huzur Treasury. Further documents between May 6 and 10 show that the outstanding account in linseed was closed at a loss, and that it was ascertained that there was due from the appellant's Bombay firm to Shankarrao in the name of Mrs. Shankarrao a sum of Rs. 80,000 odd and that this sum also the appellant was directed to pay to the treasury. The appellant asked for a year in which to pay the amount and on May 15 there is a letter Ex. C 10 from the appellant to the Inspector General of Police stating that a sum of Rs. 1,98,487 156 (which represented the amounts due to Shankarrao and Mrs. Shankarrao before referred to less the loss on the linseed account) had been credited in the Indore shop books to the account of the Maharajah Holkar and the letter then said:-" I shall pay the amount within one year". On the same date, viz., May 15, there are entries in the appellant's books under which he credits Shankarrao's account at Indore with the amount of Rs. 1,98,487-15-6 which is debited to his account at Bombay and then debits Shankarrao's Indore account with the amount and credits the amount to the account of the Maharajah Holkar.

9. Upon the fourth question propounded above the evidence of the Prime Minister of the Indore State makes it clear, we think, that the various acts to which we have referred were done under the orders of the Maharajah and were acts of the Government and not merely of the Prime Minister and the Inspector General of Police as individuals.

10. In our opinion the documents show that by May 15 the Prime Minister had made an order for the confiscation of the property of Shankarrao to be executed by the Inspector General of Police, that notice of this order had been given to the appellant, that the appellant had admitted the amount due to Shankarrao and had undertaken to pay the same to the State pursuant to the Prime Minister's order and that he had credited the amount or undertaken to credit the amount to the Maharajah. It is said that the date " May 15" in the entries in the appellant's accounts has been altered. In our opinion this is not established on the evidence, but even if the entries were made some days later this would not alter the legal position since it is clear that on May 15 the appellant had agreed to make the necessary alterations.

11. In our judgment, therefore, on May 15, 1924, when the plaintiffs obtained their order of attachment, the debt due from the appellant to Shankarrao had been seized by the authorities of the Indore State by orders which we are not at liberty to challenge, and there was nothing upon which the warrant of attachment could operate.

12. In case there is an appeal from our decision we should mention one other matter. Mr. Desai for the appellant desired to raise an alternative point in case he was wrong upon his first point, upon which we have held that he is right. He desired to contend that this action is really in the nature of garnishee proceedings and that it is not the practice of the Court to make a garnishee order when the possible effect may be that the amount will have to be paid twice over and he relied on such cases as *Martin v. Nadel* [1906] 2 K.B. 26. We held that that point was not open to the appellant. We think generally that such a point should be taken in execution proceedings and not in a substantive action such as this. It appears, however, that for some unexplained reason the summons upon which the order of September 25, 1924, (Ex. C), was made was not served on the appellant, and this fact might have justified him in raising the point in this action. But the point was not pleaded, no issue was raised upon it, and it is not even included in the grounds of appeal. We thought that it would be unfair to the plaintiffs to allow this point to be taken by amendment because if any such issue had been raised it is quite possible that questions would have been put to the Prime Minister of Indore with a view to show that there is no danger of the debt being paid twice over. It is in evidence that the appellant has not been required to make any payment of the principal or interest in respect of this debt for more than seven years, and it is quite possible that the explanation is that the authorities at Indore, if the result of our decision had been, in effect, though not in form, to show that their claim to the moneys in question was not well founded, would have been prepared to act upon that view and not claim payment against the appellant. That alternative point, therefore, was not argued before us.

13. We should mention one other point, namely, that Mr. Coltman applied for a remand of the case in order to take further evidence as to the residence of the appellant. We refused the application for reasons which appear from our judgment.

14. The appeal, therefore, must be allowed with costs and the action dismissed with costs.