

(1938) 03 MAD CK 0014
In the Madras High Court

G.M. Rajulu

APPELLANT

Vs

Rao Bahadur M. Govindan Nair

RESPONDENT

Date of Decision : 30-03-1938

Acts Referred:

Citation : AIR 1938 Mad 745 : (1938) 48 LW 74 : (1938) 2 MLJ 249

Hon'ble Judges : Horwill, J

Bench : Division Bench

Judgement

Horwill, J.—This is an application u/s 24, Civil Procedure Code, to transfer a suit from the Presidency Small Cause Court to the Madras

City Civil Court. Two suits relate to the same matter and arise out of a contract between the parties. The suit filed in the City Civil Court is by the

contractor alleging breach of contract by the person who entrusted the work to him. The suit in the Small Cause Court is by the person who

entrusted the work, alleging breach of contract by the contractor. Each claims damages. It is clearly in the best interest of the parties to have these

cases tried together and it would cause very great inconvenience if the two Courts were to give different findings on the same question, especially

as an appeal would lie from one decision but not from the other.

2. The transfer is however objected to on the ground that the City Civil Court is not competent to try or dispose of the suit within the meaning of

Section 24(a), Civil Procedure Code. That argument is based on the wording of Section 3 of the Madras City Civil Court Act which empowered

the Local Government to establish the Madras City Civil Court with jurisdiction to receive, try and dispose of all suits, etc., arising within the City

of Madras of the value not exceeding Rs. 2,500 and excepting suits cognisable by

the Small Cause Court and other Courts. This section merely sets forth the purpose for which the Madras City Civil Court was to be established, and cannot be read to mean that the Madras City Civil Court after its establishment would not be competent to try and dispose of suits that were transferred to it. A District Munsiff, for example, cannot receive, try and dispose of suits that lie within the jurisdiction of another District Munsiff's Court; but that does not prevent the District Court or the High Court from transferring the suit from the one Court to the other. In the same way, a District Court and a District Munsiff's Court may have concurrent jurisdiction to try the suits of a value not exceeding Rs. 3,000; but a District Court cannot receive a suit of the value of less than Rs.

3,000 although it can try and dispose of it. I do not therefore think that Section 3 of the Madras City Civil Court Act prevents the City Civil Court from trying suit No. 1831 of 1938 if it is transferred to it.

3. Section 5(1) of the same Act gives to the Judge of the City Civil Court all the powers of a Judge of the Small Cause Court in respect of cases

cognisable by that Court. "By that Court" must mean Judge of the Small Cause Court. Section 5(1) therefore gives the Judge of the City Civil

Court power to try and dispose of any suit cognisable by the Small Cause Court. The various duties that have to be performed by the Judges of

the Small Cause Court and the Judge of the City Civil Court is determined by the Chief Justice of the High Court u/s 5(2). I therefore feel no doubt

that the City Civil Judge is competent to try and dispose of the small cause suit if it is transferred to it. Another objection is that the petitioner has

not made his application promptly. An application was made before the Judge of the Small Cause Court to stay the suit before him pending the

disposal of the suit in the City Civil Court. That application was dismissed on 15th March, 1938. The present application was filed on 28th March,

1938; and it is argued that on account of this delay this Court ought not to grant any indulgence to the petitioner. The petitioner states that this

delay is due to the fact that he proposed to file a revision petition against the order of the Chief Judge of the Small Cause Court refusing to stay the

suit. Whether that excuse is valid or not I cannot say; but I do not consider that this delay of 12 days is sufficient to warrant my refusing a remedy

which should ultimately be as convenient to the respondent as to the petitioner.

4. This petition is therefore allowed with costs. As the suit transferred is of a small cause nature, it is desirable that it and the City Civil Court Suit No. 238 of 1938 should be disposed of early, before the vacation if possible.