
(1951) 04 P&H CK 0036

In the Punjab And Haryana At Chandigarh

Case No : Civil Revision Petition No. 12 of 1951

Govt. of Rajasthan

APPELLANT

Vs

Giasi Ram Mool Chand and Another

RESPONDENT

Date of Decision : 20-04-1951

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 86, 87

Citation : (1951) 04 P&H CK 0036

Hon'ble Judges : Soni, J

Bench : Single Bench

Advocate : Bishen Narain, for the Appellant;

Judgement

Soni, J.—On 3-10-1949, M/s. Giasi Ram Mool Chand, a Respondent in the present Petitioner, brought a suit in the Court of the Sub-ordinate Judge, Ist Class, Gurgaon, for the recovery of Rs. 749/- on account of short delivery and damages to certain goods. One of the Defendants. was the Govt. of Rajasthan. A plea was raised on behalf of the Govt. of Rajasthan Section 86, CPC barred the suit, the plea in effect being that sanction of the Govt. should have been obtained because it was a suit against a Ruling Chief. The trial Court repelled this contention and decided to proceed with the suit. This was on 16-8-1950. From that order a revision has been taken to this Court. The Petitioner before this Court is the Govt. of Rajasthan. Though the Plaintiffs Messrs. Giasi Ram-Mool Chand were served, there has been no appearance on the Plaintiffs behalf and the case has been heard "ex parte" against them.

(2) The case for the Petitioner is that the suit was brought against the Bikaner State Railway because of short delivery and damages regarding goods despatched on 22-7-1948, from Ellenabad Railway Station on the Bikaner State Railway to Rewari, a Railway Station on the B.B. and C.I. Railway. The Bikaner State Railway is a Railway owned by the State of Bikaner and as Bikaner has integrated with a number of other States in Rajasthan and is now included in the State of Rajasthan, the suit was brought against the State of Rajasthan. Mr.

Bishan Narain, learned Counsel for the Petitioner, referred to the History of Indian Railways published in 1942 by the Govt. of India. He referred to p. 250 of this book in which it is stated that the line is owned by the Bikaner Govt. except for the Nabha section of the Sadulpur-Rewari line, was worked by the Jodhpur-Bikaner Railway administration up to 31-10-1924, when it was taken over by the Bikaner Govt." Mr. Bishen Narain then referred to a publication of the Govt. of India, Ministry of States, entitled White Paper on Indian States, published in 1950. In para 136 at p. 54 of this book it is stated:

As a result of these negotiations, a fresh Covenant (Appendix XL) was signed providing for the integration of the three major States of Raj-putana, viz., Jaipur, Jodhpur and Bikaner and the State of Jaisalmer with the former Rajasthan Union to form the United State of Rajasthan. This Union was inaugurated on 30-3-1949".

Appendix XL is to be found at p. 274. The preamble of the Covenant in this Appendix states.

Whereas by a Covenant entered into by the Rulers of Banswara, Bundi, Dungarpur, Jhalawar, Kishengarh, Kotah, Mewar, Partabgarh, Shah-pura and Tonk it has been agreed that the territories of the said ten States should be integrated into one State by the name United State of Rajasthan;

And whereas it has been agreed, between the Rulers of the said ten States and the Rulers of Bikaner, Jaipur, Jaisalmer and Jodhpur that the said United State of Rajasthan should be reconstituted by the integration of the territories of all the fourteen States;

The Rulers aforesaid do hereby, in and with supersession of the said covenant and with the concurrence and guarantee of the Govt. of India, enter into this Covenant.

In Article 3 it is stated that there shall be a Council of Rulers consisting of the Rulers of all the Covenanting States, provided that no Ruler who is less than 21 years of age shall be a member of the Council.

3. The argument of Mr. Bishen Narain in bringing forward these quotations from the above books is that the Bikaner State Railway is owned by the Ruler of Bikaner and the fact that the State of Bikaner and other States have joined together into the United States of Rajasthan makes no difference in law. In law this is confederacy of Rulers and the Bikaner State Railway being owned by the Ruler of Bikaner, the proper authority against whom a suit could be brought for anything alleged to have been done by the Bikaner State Railway would be the Ruler of Bikaner. The identity of the Ruler of Bikaner still subsists in spite of the fact that there is United State of Rajasthan because that State of Rajasthan is governed by the Council of Rulers. Mr. Bishan Narain's argument is that the suit should really have been against the Ruler of Bikaner and the Govt. of Rajasthan represents the Ruler of Bikaner in this suit. In support of his argument Mr. Bishan

Narain has drawn my attention to a judgment of their Lordships of the Privy Council reported in. AIR 1938 165 (Privy Council) In that case a suit was brought against the Gaekwar Baroda State Railway and it was found that the State Railway was owned and managed by His Highness the Maharaja of Baroda through his men. Their Lordships held that a suit could only be brought against a juristic entity and the juristic entity was His Highness the Gaekwar of Baroda and if the suit were to be brought against His Highness the Gaekwar of Baroda, sanction of Govt. u/s 86, CPC would have to be obtained, and it not having been obtained, the suit was bad. Their Lordships referred to Sections 86 and 87, CPC and said:

The sections relate to an important matter of public policy in India and the express provisions contained therein are imperative and must be observed.

Their Lordships held that the suit was in reality, though not in form, a suit against His Highness the Gaekwar of Baroda and if the judgments of the Courts in India were allowed to stand they would have far-reaching results and might have the effect of nullifying the provisions of Sections 86 and 87, Code of Civil Procedure. In conclusion their Lordships held that the suit was not maintainable. In my opinion the suit against the Govt. of Rajasthan stands on the same footing as the suit against His Highness the Maharaja of Bikaner and the provisions of Section 86, CPC should, in my opinion, have been complied with. This section reads:

Any such Prince or Chief...may, in the case of the Ruling Chief of an Indian State with the consent of the Central Govt. certified by the signature of a Secretary to that Govt., but not without such consent, be sued in any competent Court.

4. It appears to have been admitted in the trial Court that there was no such consent. That being so, the suit is not maintainable.

5. I would, in the circumstances, accept this revision petition and dismiss the suit against the Govt. of Rajasthan. The trial "Court will give effect to this order, giving this Govt. costs in the suit before it.