

(1897) 12 MAD CK 0019
In the Madras High Court

Ismail Peer Ambalam

APPELLANT

Vs

Neelamegam Servai and Another

RESPONDENT

Date of Decision : 13-12-1897

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 17(c)

Citation : (1898) 8 MLJ 38

Judgement

1. The question raised in this petition is one that is not free from doubt. We think, however, that Section 17(c), Civil Procedure Code, and the last

paragraph of Section 20 must be read together and that the term "acquiesce" in Section 17(c) must be interpreted in the light thrown upon it by

Section 20. In this view it seems to us that the defendant who does not acquiesce u/s 17(c) should indicate his want of acquiescence not by a mere

objection to the jurisdiction of the court, but should apply u/s 20 for a stay of proceedings on the ground that it is more convenient that the suit

should be tried in one or other of the courts in which it might have been instituted. The object of the procedure laid down in the two Sections is to

enable a decision to be arrived at, at the earliest possible opportunity, on the question in which of the several courts the suit can be more

conveniently tried, having regard to the interests of all parties. If the plaintiff applies for leave u/s 17(c) the court will at once determine the question.

If the plaintiff does not do so, the law contemplates that, the question may be raised by any non-resident defendant, who, however, must do so by

showing that the trial can be more conveniently held by some other court. A bare objection to the jurisdiction, is not, therefore, a compliance with

the law, and, in the absence of such compliance, the defendant must be deemed to acquiesce in the institution of the suit in the court in which it is.

2. We have arrived at this conclusion on a construction of Sections 17 and 20 of the C. P. C.; but we may observe that this construction appears

to be in accordance with the decision in Viraragava. Krishnasami, ILR 6 M. 344 . The reference in that case to Section 17 (b) seems to us to be a

clerical error for Section 17 (c). If this view is correct, that case is a direct authority in support of this conclusion. In the present case, the 2nd

defendant did not make an application u/s 20. He must, therefore, be deemed to have acquiesced in the institution of the suit at Madura. We,

therefore, set aside the decree of the Sub-Judge and direct that the suit be restored to the file and be disposed of according to law.

3. Costs will abide and follow the result.