

(1919) 10 BOM CK 0015
In the Bombay High Court

Jamshedji F. Shroff

APPELLANT

Vs

Husseinbhai Ahmedbhai

RESPONDENT

Date of Decision : 11-10-1919

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 92
Pensions Act, 1871 — Section 4, 6

Citation : (1920) 22 BOMLR 319

Hon'ble Judges : Pratt, J

Bench : Single Bench

Judgement

Pratt, J.—The summons was issued on an application by the plaintiff for leave to continue the suit against the defendants who are Receivers of the estate of Ahmedbhai Habibbhai. The plaintiff claims to have been employed as a broker by the Receivers and sues for his brokerage. It is clear, therefore, that there is a question to be tried and the case is one in which the Court would grant leave as a matter of course: Lane v. Capsey [1891] 3. Ch. 411 and Braja Bhusan Trigunait v. Sris Chandra Tewari (1918) 4 P.L.J. 20.

2. The only difficulty arises from the fact that per incuriam the suit was filed without the previous sanction of the Court. It was held in Pramanatha Nath Gangooly v. Khetra Nath Banerjee (1904) 32 Cal.270 that leave of the Court is a condition precedent to the right to sue and that that omission cannot be rectified by subsequent application. The judgment in that case is not supported by any reasons and was not followed in Rustomjee Dhanjibhai Sethna v. Frederic Gaebele (1918) 46 Cal. 352. The various statutory provisions which require the consent of the Court or some other authority as a condition on which a suit may be maintained are collected in the case of Chandulal v. Awad bin Umar Sultan (1896) 21 Bom. 351. The consideration of those and subsequent authorities shows that the words in the Statute have to be examined in each case in order to ascertain, whether the provision is a bar to the Court dealing with the action, or is a bar to the original institution of the suit. In the former case the suit may continue on leave subsequently granted: for instance, the leave of the Collector

in a suit to which Sections 4 and 6 of the Pensions Act XXIII of 1871 are applicable : (1881) L.R. 9 I.A. 8 (Privy Council) ; or leave under Order I, Rule 8 (1), CPC : Fernandez v. Rodrigues (1897) 21 Bom. 784; or leave u/s 20, Civil Procedure Code: Narayan Shankar v. Secretary of State (1906) 30 Bom. 570. But in the latter-case, that is, when the bar is to the original institution of the suit, leave subsequently granted is of no avail : for instance, the consent of the Advocate General u/s 92, Civil Procedure Code: Tricumdas Mulji-v. Khimji Vullabhdass (1892) 16 Bom. 626; or the leave of the Court u/s 17 of the Presidency Towns Insolvency Act: In Re: Dwarkadas Tejbhandas, .

3. In the case of a suit against a Receiver there is no statutory provision requiring the leave of the Court. But the same principle would apply, and the defect can be cured by leave subsequently granted if there is no bar to the institution of the suit, that is to the jurisdiction of the Court to admit the plaint.

4. The necessity for leave to sue the Receiver rests upon two considerations : (1) that such a suit is incompatible with the dignity and authority of the Court; (2) that it might interfere with the duty of the Court to maintain the Receiver's possession. Neither of these considerations affects the jurisdiction of the Court. "They are matters which the Court can deal with after the suit is filed; and the Court could order the suit to be stayed until it was satisfied that there was no encroachment upon its authority, nor attempt to interfere with the Receiver's possession.

5. Therefore it seems clear that leave may be granted after the filing of the suit, and Mr. Desai with his customary fairness does not dispute this proposition.

6. Accordingly, I make the summons absolute but direct that plaintiff pay the costs of the summons. Counsel certified.