
(1964) 09 AP CK 0004

In the Andhra Pradesh High Court

Case No : Case Referred No. 39 of 1964

Jelejar Hormosji Gotla

APPELLANT

Vs

The State of Andhra Pradesh

RESPONDENT

Date of Decision : 30-09-1964

Acts Referred:

Civil Procedure Code Amendment Act, 1951 — Section 20
Civil Procedure Code, 1908 (CPC) — Section 4, 80

Citation : AIR 1965 AP 288

Hon'ble Judges : Satyanarayana Raju, J;Kumarayya, J

Bench : Division Bench

Advocate : V.K. Vaidya, for the Appellant; N.V.B. Shankara Rao, Govt. Pleader, for the Respondent

Judgement

Satyanarayana Raju, J.

(1) This matter comes before us on a reference made by the First Additional Chief Judge, City Civil Court, Hyderabad, under S. 133 of the Code of Civil Procedure.

(2) The point which arises for decision in this reference is whether the Hyderabad Suits Against Government Act (V of 1320 Fasli) Hereinafter referred to as "the Hyderabad Act" is void by reason of its repugnancy to the CPC which was extended to the erstwhile State of Hyderabad in April 1951.

(3) For a better appreciation of the point in controversy, we may, at the outset, briefly mention the admitted facts.

On July 23, 1953, the plaintiff gave notice to the former Government of Hyderabad, under S. 80 of the Code of Civil Procedure, and on November 23, 1953 instituted the suit against them for recovery of a sum of Rs. 4,00,000 by way of damages for an alleged breach of the contract entered into by him with the Government. The Government filed their written statement raising various contentions regarding the tenability of the claim made by the plaintiff. The trial of

the suit was taken up sometime in the year 1955. Eventually, on October 18, 1958, the suit was decreed for a sum of Rs. 1,50,000 (O.S.). Against the said decree, the Government of Andhra Pradesh preferred an appeal to the High Court. The appeal was heard Manohar Pershad and Narasimham JJ. During the hearing of the appeal, the learned Government Pleader filed two petitions : (1) for permission to file an additional grounds, and (2) for permission to raise additional written statement. The additional written statement raised an objection that the suit was not maintainable by reason of the fact that necessary permission under the mandatory provisions of the Hyderabad Act had not been obtained and as such the suit was liable to be dismissed in limine. On November 8, 1962, the High Court allowed the appeal and remanded the suit for fresh disposal. It may be mentioned that the learned Judges gave permission to the Government to raise the additional pleas, reserving however, the right of the plaintiff to file a rejoinder.

(4) Pursuant to the order of remand, the suit was again taken on file by the First Additional Chief Judge. Before him, the Government files their additional written statement on June, 19, 1963.

(5) The plaintiff filed a rejoinder wherein he submitted that the Hyderabad Act did not apply to the suit. He alleged that the breach of contract had taken place after the Constitution came into force, and that on the date when the suit was filed, the Indian CPC was made applicable to the territories forming part of the State of Hyderabad. He further pleaded that there was an obvious repugnancy, the Hyderabad Act became void. It was also contended that S. 4 C. P. C., and the Hyderabad Act, and that by reason of the repugnancy, the Hyderabad Act became void. It was also contended that S. 4 C. P. C., did not apply and that the forums specified in the Hyderabad Act were not in existence and were not available on the date of the suit. There was a further plea taken by him that there was a waiver of the objection and that, therefore, it could not be raised at this belated stage.

(6) In the light of fresh pleadings, certain additional issues were framed by the trial Court. Those material for the purposes of the present reference are the following; -

"3. Is the plaintiff's suit not maintainable as no leave to sue was obtained under the Suits Against the Government Act (v of 1320 Fasli)?

4. Is not the Suits Against the Government Act V of 1320 Fasli, void?

5. Is the suit against the Government maintainable under Act V of 1320 Fasli when the forums provided for in the said Act were not in existence and not available at the date of the suit?"

The learned trial Judge, before whom the matter was argued at considerable length, came to the conclusion that the provisions of the Hyderabad Act must be declared void as being repugnant to S. 80 C. P. C., but since there was no

decision of the Andhra Pradesh High Court or the supreme Court declaring the Hyderabad Act to be inoperative, he referred the matter to this Court under S. 133 C. P. C. for the determination of the question of the validity or otherwise of the Hyderabad Act.

(7) It is contended by Sri N. V. B. Sankara Rao, the learned government Pleader, that the Hyderabad Act was an "existing local or special law", within the meaning of S. 4 C. P. C., and that, therefore, its provisions continued to be operative even after the Indian CPC was made applicable to the territories forming part of the State of Hyderabad.

He has further contended that the Hyderabad Act, in insisting upon a suitor obtaining the permission of the Government before instituting a suit, which could either be granted or refused, gave a vested right to the Government and finally that as the Hyderabad Act remained on the statute book till the year 1955, all suits filed against the Government till the date of its repeal must necessarily be governed by the procedure indicated by that Act.

(8) Sri V. K. Vaidya has, on the other hand, contended that the cause of action for the suit arose after the state of Hyderabad became a part of the Indian Union and after that promulgation of the Indian Constitution; that the suit was actually instituted after the CPC (Amendment) Act (2 of 1951) made its provisions applicable to all Part B States, including the State of Hyderabad; that section 4 C. P.C., would make an existing local or special law applicable only in the absence of a specific provision to the contrary; that S. 80, C. P. C. is such a specific provision; and that, therefore the Hyderabad Act became void by reason of its repugnancy to S. 80, C. P. C., and that it should be declared as such assuming that it was in force.

(9) We may, at this juncture, briefly sketch the background of the legislation, and the changes brought about by the promulgation of the Constitution.

(10) The Hyderabad Act was enacted on March 28, 1911. We will presently refer to its material provision. About four years thereafter, the Hyderabad CPC became law. The provisions of the Hyderabad Act, together with the provision of S.439 of the Hyderabad Civil Procedure Code, may broadly be taken to correspond to S. 80 of the Indian Code of Civil Procedure. It is not necessary for our present purpose to trace the various events which led to the integration of the former State of Hyderabad into the Indian Union. It is sufficient to state that the territories forming part of the State of Hyderabad, which were till then under the hegemony of His Exalted Highness the Nizam, became part of the Indian Union on January 26, 1950. it was on that date that the Indian constitution was promulgated. The result was that Hyderabad, as a part B state, became a component part of the Indian Union with all the legal consequences flowing therefrom. Hyderabad continued to be a part B State for some years thereafter. While so, on April 1, 1951, the CPC (Amendment) Act (11 of 1951) extended the provisions of the CPC to all Part B States in the Indian Union. It may be

mentioned here that the Hyderabad Act was repealed on April 29, 1955, by Act V of 1955. One more event may be mentioned, and that is, as result of the States Reorganisation Act, 1956, roughly nine of the Districts comprised in the former State of Hyderabad were added on to the State of Andhra which was renamed the State of Andhra Pradesh.

(11) Now, coming back to the question, which has been referred to us for decision, it would be convenient to examine the material provisions of the Hyderabad Act on the basis of which the learned Government pleader contends that the present action is not maintainable.

(12) The material provisions of the Hyderabad Act are as follows:-

"3. Suits against the government: No suit shall be filed against the Government without the permission of the Madar-ul-Moham of Hyderabad and such a permission will be given under the same circumstances and in the same way as are prescribed in this Act.

4. Drafting the plaint: The suit shall be filed through an application. Such application will be addressed to the Nizam's Government and it shall contain all requisites respectfully as should be given in a plaint in civil suits and such application will be verified and signed according to C.P.C.

Provided that no such application shall be submitted until and unless the applicant has availed himself of his right of appeal in the concerned department.

5. Submission of the application: The application referred to above shall be submitted on unstamped paper before the legal Adviser of the Hyderabad Government and if it is drafted according to law, the Legal Adviser of the Government of Hyderabad will after enquiry from the concerned office and after necessary enquiries forwarded along with its reply of the concerned office together with its own opinion to Prime Minister of Hyderabad.

6. Relief sought for in the plaint: If the Government of Hyderabad admit the claim partly or wholly, then orders will be passed for the performance thereof accordingly and the relief will be awarded. If the claim is admitted partly then the Prime Minister may pass suitable orders about the remaining portion and the applicant will with respect to the remaining portion shall be competent to submit another application within 30 days from the receipt of the order as if it is a fresh claim.

7. Permission for filing suit: If the claim is for any property acquired by the Government or for its compensation or for a property which may be due from the Government on the basis of any contract, then the Prime Minister may give permission to hear the claim and he may, if deemed proper, pass orders to any special committee giving reasons to hear it and to pass orders and to make any other restriction which he may deem desirable applicable to this case.

8. Proceedings when permission to file a suit is given: When the Prime minister

of Hyderabad is of the opinion that permission for filing a suit should be given, then the application will be returned to the applicant as early as possible after endorsing the order thereon, and if the order is given for hearing the case in any particular court or committee, then the Legal Adviser of the Government will communicate the orders of the Prime Minister, Hyderabad, to the concerned Secretary, to the applicant and also to the Court or special committee and also to the Court or special committee shall try the case as early as possible.

9. Proceedings in case permission for filing suit is not allowed: If the Prime Minister is of the opinion that permission to file any particular suit should not be given then such proceedings will be submitted before the Nizam for suitable orders and whatever orders are passed by the Nizam, it will be complied with."

(13) The above provisions may be summarised thus:

Section 3 expressly prohibited the institution of suits without the prior permission of the Prime Minister of Hyderabad (Madar-ul-Moham Sarkar Ali) and such permission should be granted in the manner prescribed in the Act. Section 4 laid down that a suit should be instituted by means of an application to the Nizam's Government. Section 5 provided for the filing of an application in the form of a plaint before the Legal Adviser, who after hearing the parties, should make recommendations, and the Prime Minister could either give permission or withhold it. In case permission was granted, the party would get back his application with an endorsement and he then could file the suit in a Court in which such suit would ordinarily lie. It was open to the Prime Minister to admit the whole or a part of the claim. In case the claim was admitted in part only, the Prime Minister might pass suitable orders with respect to the remaining portion of the application, which application should be resubmitted within the specified time and then treated as a fresh claim. If the Prime Minister so chose, he might constitute a special committee to hear the case. The Prime Minister was not entitled to refuse permission. If he did not deem it proper to grant permission, he was to submit the case for proper orders to the Nizam, and whatever orders were passed by the Nizam would have to be complied with.

(14) Now, the CPC (Amendment) Act, 1951, (Central Act 11 of 1951) received the assent of the President on February 17, 1951, and was published in the Gazette of India, Extraordinary, two days later. By S. 2 of that Act, the of India except certain specified areas.

"(1). If immediately before the date on which the said Code comes into force in any Part B State, there is in force in that State any law corresponding to the said Code, that law shall on that date stand repealed:

Provided that the repeal shall not affect

(a) the previous operation of any law so repealed or anything duly done or suffered thereunder, or

(b) any right, privilege, obligation or liability acquired accrued or incurred under

any law so repealed, or

(c) any investigation, legal proceeding or remedy in respect of any such right, privilege, obligation, liability, penalty, forfeiture or punishment as aforesaid, and any such investigation, legal proceeding or remedy may be instituted, continued or enforced, and any such penalty, forfeiture or punishment may be imposed as if this Act had not been passed.

(2) Subject to the provisions contained in subsection (1), notifications published, declarations and rules made, places appointed, agreements filed, scales prescribed, forms framed appointments made and powers conferred under any enactment hereby repealed shall, so far as they are consistent with the said Code, have the same force and effect as if they had been respectively published, made, appointed, filed, prescribed, framed and conferred under the said Code and by the Authority empowered thereby in such behalf.

(3) In every law or notification passed or issued before the commencement of this Act in which reference is made to or to any Chapter or section of any law hereby repealed, such reference shall, so far as may be practicable, be taken to be made to the said Code or its corresponding part, order, section or rule."

(15) By reason of Central Act 11 of 1951, the Hyderabad CPC was repealed and the CPC (Act V of 1908) was extended to the Hyderabad State subject to the saving clause.

(16) Sri Vaidya has relied upon S. 20 as repealing by implication the Hyderabad Act which prescribed the procedure to be followed prior to the institution of suits against the Government. This result, according to him, flows from the language of S. 20, which says that "if immediately before the date on which the said Code comes into force in any Part B State, there is in force in that State any law corresponding to the said Code, that law shall on that date stand repealed." Sri Vaidya would contend that the corresponding law pertaining to procedure in force in the state of Hyderabad immediately before the central Act was extended, was contained in the Hyderabad Act together with section 439 of the Hyderabad Civil Procedure Code.

(17) It is, however, contended by the learned Government Pleader that the Hyderabad Act is not a law which corresponds to S. 80 of the Code of Civil Procedure, within the meaning of S. 20 of the CPC (Amendment) Act, 1951, and that, therefore, there is no question of the Hyderabad Act being repealed within the meaning of S. 20. Amplifying his argument, the learned government Pleader has contended that Hyderabad Act was not one prescribing a rule of procedure but vested a substantive right in the Government in that it was open to the Nizam under the Hyderabad Act to refuse permission of he deemed fit to do so.

(18) Section 80 C.P.C., enacts only a rule of procedure and does not affect the right to sue Government which is given by the constitution of India. As pointed out by their lordships of the Supreme Court in *State of Bihar v. Abdul Majid* AIR

1953 SC 245 in India, from the earliest times, the Mode of procedure to proceed against the Crown has been laid down in the Code of civil had prescribed the procedure for all kinds of suits, and the present section 80 substantially stands the same as it was in 11859. The provisions of S. 80 have received recognition in all the government of India Acts that have been passed since the year 1859. The provisions of S. 80 have received recognition in all the Government of India acts that have been passed since the year 1859. There, their Lordships repelled a contention raised before them by the learned Solicitor-General that the Crown could not be sued for arrears of salary directly by a civil servant. That right is now expressly preserved by Article 300 of the Constitution, which provides as follows:-

"(1). The Government of India may sue or be sued by the name of the Union of India and the government of a State may sue or be sued by the name of the State may, subject to any provisions which may be made by the Act of Parliament or of the Legislature of such State enacted by virtue of powers conferred by this Constitution; sue or be sued in relation to their respective affairs in the like cases and the Dominion of India and the corresponding Provinces, or the corresponding Indian States might have sued or been sued if this Constitution had not been enacted.

(2) It at the commencement of this Constitution-

(a) any legal proceedings are pending to which the Dominion of India is a party, the Union of India shall be deemed to be substituted for the Dominion in those proceedings; and

(b) any legal proceedings are pending to which a province or an Indian State is a party the corresponding State shall be deemed to be substituted for the Province or the Indian State in those proceedings."

(19) It is no doubt true that in England, before the passing of the Crown Proceedings Act, 1947, the normal rule of procedure in regard to claims against Government was not by suit but by a petition of right and certain other special forms of procedure. In India, however, the procedure of petition of right was never adopted and the same seems to have been the rule in several other countries.

(20) Article 300 lays down that the Government, Central or States, can sue and be sued in a Court of law. Such suit must be in the name of the Union of India or the State, as the case may be, The Article, however, maintains intact the procedure to be followed in legal proceedings by or against Government which were pending at the time of the commencement of the Constitution. Therefore, after the advent of the constitution, there is no question of a suitor being refused permission to file a suit against Government.

(21) As has been pointed out by a Division Bench of this Court, consisting of Mohammed Ahmed Ansari and Jaganmohan Reddy, JJ. In Kaki Lachmiah v. State

of Hyderabad, Now Andhra Pradesh AIR 1958 A P 315 the object underlying the Hyderabad Act which insisted on a suitor obtaining the permission of Government before he could institute a suit apparently was to prevent unnecessary litigation and to afford the Government an opportunity of compromising the claim before it reached the Court of law. The same is the object of S. 80 of the Code of Civil Procedure. In enacting S. 80 C.P.C., the object of the Legislature was to afford the Government concerned an opportunity to reconsider its position with regard to the claim made and to make amends or settle the claim, if so advised, without recourse to the trouble and cost of litigation.

(22) After the State of Hyderabad became a part of the Indian Union and the Constitution became applicable thereto with all its legal consequences, there is no question of a suitor being deprived of the right to file a suit against government. As already indicated, Article 300 preserves the right of a litigant to sue Government. The Hyderabad Act was law prescribing procedure and read with S. 439 of the Hyderabad CPC corresponded to S. 80 of the Code of Civil Procedure.

(23) We are unable to give effect to the contention of the learned counsel that the Hyderabad Act was not a procedural law but one vesting certain substantive rights in the Government. We are also unable to accede to his contention that the Hyderabad Act was not a law corresponding to S. 80 of the Code of Civil Procedure.

(24) The learned Government Pleader mainly relied upon s.4 of the CPC and contended that the Hyderabad Act being a special or local law, was saved from the operation of the Code Civil Procedure (Amendment) Act.

(25) Section 4 reads as follows:-

(1) In the absence of any specific provision to the contrary, nothing in this Code shall be deemed to limit or otherwise affect any special or local law now in force or any special jurisdiction or power conferred, or any special form of procedure prescribed, by or under any other law for the time being in force.

(2) In particular and without prejudice to the generality of the proposition contained in sub-section (1), nothing in this Code shall be deemed to limit or otherwise affect any remedy which a land holder or landlord may have under any law for the time being in force for the recovery of rent of agricultural land from the produce of such land."

(26) Section 4 is prefaced by the important clause "in the absence of any specific provision to the contrary". It is clear from this clause that when anything in the CPC is in conflict with anything in any special or local law or with any special jurisdiction or power conferred or any special form of procedure prescribed by or under any other law, the Code will not (in the absence of any specific provision to the contrary) prevail so as to override such inconsistent provisions.

(27) It is important to note that the words "any special or local law" occurring in

S.4 are qualified by the words "now in force". Therefore the special or local law power must be one in force on the material date. This brings us back to the force after the CPC (Amendment) Act, 1951, made the entirety of the CPC applicable to the State of Hyderabad. The learned Government Pleader laid considerable stress in the fact that the Hyderabad Act remained on the statute book till it was repealed by Act V of 1955.

(28) The statement of objects and reasons, which was appended to Bill No. 12 of 1955, which was designed to repeal the Hyderabad Suits against Government Act, 1320 Fasli, is very instructive and may be extracted:

"In view of the extension of the CPC (1908), all suits against the Hyderabad State would be governed by the provisions of that Code and consequently the Hyderabad Suits against Government Act, No. V of 1320 Fasli, stands automatically repealed. However, considering the fact that the said Hyderabad Act is a special Act, it is deemed advisable to repeal it expressly as it no longer serves the purpose for which it was intended."

(29) It is no doubt true that a law is not repealed by becoming obsolete, but when as in the present case, it no longer served any useful purpose, the Act must be deemed to have been impliedly repealed. Indeed, Repealing and Amending Acts are enacted by Legislatures from time to time in order to repeal enactments which have ceased to be in force or have become obsolete or retention whereof as separate Acts is unnecessary. As it was pointed out by Bhandari C. J. in *Mohindar Singh Vs. Mst. Harbhajan Kaur*,

"The principal object of Repealing and Amending Acts is "to excise dead matter, prune off superfluities and reject the clearly inconsistent enactments."

(30) It must, therefore, be held that the Hyderabad Act was not in fact in force on the Material date. On this conclusion, it follows that S. 4 of the CPC cannot be invoked.

(31) That apart, there is a fundamental difficulty in the way of applying the provisions of the Hyderabad Act having regard to the changed set-up and the non-existence of hierarchy of officers, whose permission must be obtained under that Act. The Nizam, the Prime Minister and the Legal Adviser to the Government are the three principal functionaries under the Hyderabad Act. All of them have ceased to function in their former capacities. It is clearly admitted by the learned Government Pleader that the Nizam no longer enjoys the powers which he had before the date of the promulgation of the constitution. His designation had been changed into that of Raj Pramukh and his powers has been curtailed. After the advent of the Constitution, he had become a constitutional head of that State, whose functions and powers were solely regulated by the provisions of the Constitution. The office of Prime Minister of Hyderabad does not exist as such, as also the Legal Adviser to the Government.

(32) Sri Sankara Rai, has, however, contended on the basis of certain decisions

rendered under Art . 311 of the Constitution, that if the functionaries specified in the Hyderabad Act no longer existed, the provisions of the act might still be enforced by substituting the corresponding functionaries to the functionaries specified in the Hyderabad Act. He has suggested that the Prime Minister may be equated to the Governor or Chief Minister; and the legal Advise, to one of the officers, who, in the present set-up, tenders advice to the Government on legal matters.

However attractive this suggestion may appear to be, we find it difficult to take it difficult to take it seriously for the simple reason that it is incapable of a practical implementation. We may point out that neither the Governor nor the Chief Minister nor any of the law officers, whose duty is at present to tender advice to the Government on legal matters, is invested with any of the powers exercisable by the functionaries mentioned in the Act. None of them is invested with jurisdiction to admit or reject the claim made by a suitor against the Government either in whole or in part. As we have already pointed out, the Hyderabad Legislature itself, as is clear from the statement of objects and reasons appended to the Hyderabad Amendment Act (V of 1955) considered that the Act was no longer in force. That seems to be the reason why the Act remained on the statute book without any amendments to suit the changed conditions. We are not now on the part of the Government in invoking the provisions of the Act. But the fact remains that when the plaintiff gave notice to the Government under S. 80 C.P.C., they did not take any objection of the kind now sought to be taken They did not even send a reply to the notice. When in the year 1954 they filed the written statement contesting the suit claim, they did not raise this objection. All this indicates that the government did not consider that they should take any objection on the basis of the provisions contained in the Hyderabad Act, and that they considered that it was, in fact, a dead letter. It was only in the year 1962 that for the first time this objection was taken. As rightly contended by the learned Government pleader, there is no question of estoppel against a statute, and an objection, if it is otherwise valid, could be taken, the more so because a Division Bench of this Court allowed the Government to raise this objection subject to the right of the plaintiff to raise the plea of waiver. But we have said all this only to emphasise that all the concerned authorities were under the impression that the provisions of the Hyderabad Act were no longer available.

(33) It only remains for us to consider the decisions relied upon by the learned Government Pleader. The first of them is AIR 1958 AP 315 . It was there contended that the Hyderabad Suits Against government Act was violative of Art. 14 of the Constitution inasmuch as all suits against certain Departments of the State were to be filed after permission of the government, while no such permission was required for suing a municipality, Court of wards or some other local institution. Mohammed Ahmed Ansari and Jaganmohan Reddy, JJ., held that there was intelligible differentia between the two types of suits, that the permission was insisted for suits against such Departments as were closely associated with the administration of the whole State and not against the

departments which were managing either the affairs of the individuals or were looking after local administration, that the object of the legislation apparently was to prevent unnecessary litigations and to afford the Government the opportunity of compromising the claim before it reached the Court of law. During the course of the judgment, the learned Judges observed (and this is the passage on which the learned Government Pleader relies):

"The ground for continuing the enactment after the inauguration of the Constitution, is equally obvious. Several states under the Constitution has inherited, if that phrase could be use in this connection, the rights and obligations of the former Indian States and it is but reasonable that the devolution of the liabilities should not be heavier than those of the States that have ceased to exist. Therefore, we find in Art. 300 of the Constitution the words "if this Constitution had not been enacted". IT follows that a claimant who could not sue a former Indian State without permission, could not sue without permission even after the Constitution. IT is, therefore, reasonable that the litigant should have been given a fair opportunity to get permission under the Act for such suits as could have been filed against the former State."

(34) Admittedly the Act was an existing enactment when the plaint was filed in the case and rejected. A careful scrutiny of the facts of the case reveals the point of distinction. There the plaintiffs sued the Government for damages for breach of an alleged contract. The alleged breach of the contract took place sometime in December 1949, before the date of the promulgation of the Constitution. The learned Judges specifically rejected an argument of the learned counsel for the appellant that the breach of contract took place in February 1950. It is, therefore, concluded that the reach in the case before them arose before the inauguration of the Constitution. In paragraph 3 of their judgment the learned Judges made the following significant observation:-

"As the judgment rejecting the plaint is dated January 5, 1951, we are not called upon to determine any question of repugnancy between the Act and the Civil Procedure Code, which was extended and the Civil Procedure Code, which was extended to Part-B States only in April 1951."

(35) Having regard to the circumstances in which the decision was rendered, it is impossible to contend that the learned Judges decided the question as to whether the Hyderabad Act was in force after the date of the extension of the CPC in 1951.

(36) The next of the decisions is an unreported Judgment of a Division Bench of this Court, consisting of Srinivasachari and Munikanniah JJ., in A. S. No. 62/1 of 1955, rendered on 16-4-1962 (Andh. Pra.). So far as it is material for the present purpose, the point which arose for decision before the learned Judges of the Division Bench was whether the suit was in time. The facts there were these:

According to the state of the law then existing, that is, by reason of the Hyderabad Act, no suit for any claim against the Government could be instituted

without obtaining the requisite sanction of the Government. The plaintiffs applied under the Hyderabad Act to the Legal Adviser for permission to sue the Government. Their application for permission to sue was filed on June, 4, 1949, and the permission to sue was granted on November 15, 1951, and the suit was instituted on February 9, 1952. The learned Judges reached the conclusion that it was Article 62 of the Limitation Act that would be applicable to the suit and that, therefore the period prescribed for the institution of the suit would be three years from the date of the termination of the contract, which should be regarded as October 15, 1947. Since the application for permission to sue was filed by the plaintiffs before the expiry of the period of three years from the date of the expiry on October 15, 1950), since the application for permission to sue was granted in November 1949, and since, after the permission was accorded, the Act required that the suit should be filed within three years from the date of such sanction and since the suit was filed within three years from the date of the sanction, there was no infirmity with regard to the filing of the suit after the granting of the sanction. The learned Judges of the Division Bench held that the suit was within time.

(37) For the Government a further plea was raised in appeal that the suit was bad for want of notice under S. 80 C.P.C. In dealing with this objection, the learned Judges observed:

"We do not think we need consider about it because in our opinion according to the existing law, viz., the Suits Against Government Act V of 1320 F., the plaintiffs had to adopt the course enjoined in the said Act of applying for permission to sue and not merely the issuing of the notice to the Government as envisaged by section 80 C.P.C."

(38) From the facts narrated above, it is manifest that the cause of action for the suit, which was the subject-matter of the appeal before the date of the constitution and rightly did plaintiff apply for permission under the Hyderabad Act. This decision has no relevancy for the purpose of deciding the point raised before us.

(39) The leaned counsel for the Government has also relied upon certain other decisions which we do not think have any bearing on the present question.

(40) We may now summarise our conclusions: after the extension of the Code of civil Procedure, 1908, by the CPC (Amendment) Act, 1951, the Hyderabad Suits Against Government Act stood repealed by reason of S. 20 of the Amendment Act. Section 4 of the CPC cannot be invoked for the reason that the Hyderabad Act is not a special or local law then in force, i.e., on the date when the CPC (Amendment) Act was enacted. In any view, the Hyderabad Act was in a state of disuse and even otherwise, by reason of the changed set-up and by reason of the fact that functionaries specified under the Hyderabad Act ceased to function in their former capacities and since there was no practical way of implementing its provisions if a suitor applied for permission to sue, the Act was no longer in

operation.

(41) The Reference is answered accordingly. The costs of the reference will be provided for by the trial Court in the decree which that Court will ultimately pass.

(42) Reference answered accordingly.