

(1919) 02 BOM CK 0012
In the Bombay High Court
Case No : O.C.J. Suit No. 355 of 1918

Khemchand Issardas

APPELLANT

Vs

Khairuddin Ranglahi

RESPONDENT

Date of Decision : 15-02-1919

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 35 Rule 4

Citation : AIR 1919 Bom 15 : (1919) 21 BOMLR 948

Hon'ble Judges : Marten, J

Bench : Single Bench

Judgement

Marten, J.—This is a very curious case. It is an interpleader suit brought by the plaintiffs but neither of the two defendant-claimants appears at the trial. The first defendant has not entered an appearance at all in the suit. The second defendant did appear by a solicitor in the suit but has not appeared at the trial.

2. The question, therefore, that arises, assuming the plaintiffs make out their case, is what relief the Court ought to grant.

3. The facts very shortly are these. The plaintiffs are commission agents, and in July 1917 they received instructions from defendant 1 by telegram to sell 112 bales of cotton which were being consigned to the plaintiffs through defendant 2. They were also instructed to honour a hundi for Rs. 12000 which the defendants or one of them were to draw on the plaintiffs. The cotton arrived and was duly sold and the hundi was honoured and paid by the plaintiffs. After doing all that, and after giving credit for the sale proceeds, and after debiting the parties with the hundi, there remains a balance of Rs. 2558-2-7 which the plaintiffs admit are due from them.

4. Now what has happened is this that defendant 2 claims that he was really the pledgee of the goods, that he was really the consignor to the plaintiffs and that as between himself and defendant 1, he ought to receive the balance of the purchase money.

5. A reference to Daniel's Chancery Practice, Vol. II, 7th Edn., at p. 1275, shows that interpleader was originally a remedy in the Equity Courts and was begun by a Bill of Interpleader. Subsequently by statute interpleader was extended to the Common Law Courts and was later on amplified and is now governed by the Rules of the Supreme Court which will be found in R. S. C. O. 57. Those Rules are somewhat to the same effect as the provisions as to interpleader embodied in Section 88 and in the 1st Schedule, Order XXXV, of the Civil Procedure Code.

6. Mr. Setalvad has not referred me to any of our Bombay High Court Rules dealing specifically with interpleader. As far as my recollection goes, I do not think we have any Rules modifying what is to be found in the Civil Procedure Code, One knows that interpleader is rather a technical subject, and that it is not always open to the parties to obtain relief by way of interpleader. I have not had the benefit of any argument on the point, but, as far as I can see, the plaintiffs have, according to the practice here, properly taken their proceedings by plaint. Proceedings by Originating Summons do not appear to be open to them, as would be the case in England. Therefore, as far as I can see, this is a case where within the meaning of Section 88, two or more persons claim adversely to one another the same debt from the plaintiffs.

7. I think, therefore, the suit has been properly brought. The evidence in support of it is in order, and therefore, as far as the plaintiffs are concerned, I think they have done all they can.

8. Now comes the question, what course I ought to adopt? Turning to Order XXXV, Rule 4, it provides that:?

At the first hearing the Court may (a) declare that the plaintiff is discharged from all liability to the defendants in respect of the thing claimed, award him his costs, and dismiss him from the suit; or (b) if it thinks that justice or convenience so require, retain all parties until the final disposal of the suit.

9. There are also certain other alternatives. Under Sub-rule (2) if I find that the admissions of the parties or other evidence enable me to do so, I may adjudicate the title to the thing claimed. Or, again, under Sub-rule (3) if I find that the admissions of the parties do not enable me so to adjudicate, then I may direct issues to be framed and tried, and can proceed to try the suit in the ordinary manner.

10. That is all very well, when there are two claimants before the Court, but in fact I have got neither the one nor the other. I cannot possibly try an action where I have got neither the plaintiff nor the defendant, nor, on the other hand, can I adopt the course of merely dismissing the claim of one or dismissing the claim of the other. There is money in the hands of the plaintiffs which admittedly does not belong to them. Therefore I must make some order which will put matters in train for the due disposition of this sum and for its custody meanwhile, and which will at the same time give a complete discharge to the present plaintiffs.

11. Mr. Setalvad did refer me to one case of Eveleigh v. Salsbury (1836) 3 Bing. N.C. 218. It was an interpleader suit and there neither the plaintiff nor the claimant appeared. It was the case of a Sheriff having seized certain goods, and there the Court simply directed so much of the goods to be sold as would satisfy the Sheriff's charges and directed the Sheriff to abandon the rest of the goods. In other words it directed the Sheriff to withdraw after realising his charges.

12. I cannot take that course here, because I cannot put matters in statu quo as was done there. I must make some order as to what is to be done with the moneys in the hands of the plaintiffs.

13. On the whole I think that the proper course will be to follow strictly the first part of Rule 4(1) of Order XXXV and to declare that the plaintiffs are discharged from all liability to the defendants in respect of the money claimed, award them their costs and dismiss them from the suit, and treat this as the first hearing.

14. Then I will direct that the plaintiffs after getting their taxed costs must pay the balance of the Rs. 2558 into Court to the credit of this suit.

15. Then the order will provide that it is to be without prejudice to any claim by the defendants or either of them for payment out of Court, or alternatively that the suit may proceed in the names of one of them as plaintiff in place of the present plaintiffs, or alternatively that an issue be directed to determine the rights of the two defendants inter se.

16. I think the order may also say, to make it quite clear, that this should be treated as an order at the first hearing under Rule 4(1)(a) of Order XXXV of the Civil Procedure Code.

17. Then Mr. Setalvad said he would also like to have an injunction. I do not know that he really requires an injunction, but certainly one of the defendants has threatened the plaintiffs with proceedings, and I think it may properly form part of the order that on payment into Court of the balance, the defendants and each of them are to be restrained from taking any further or other proceedings against the plaintiffs in relation to the suit goods or the proceeds of them.

18. I think that really deals with the points.

19. My order will therefore be:?

20. Direct plaintiffs' costs to be taxed and paid out of the Rs. 2558 in plaintiffs' hands. Direct balance of Rs. 2558 to be paid to the Accountant-General to the credit of this suit.

21. Declare that, on such payment, plaintiffs will be discharged from all liability to defendants or either of them in respect of the suit goods or the proceeds thereof, and direct that thereupon the plaintiffs be discharged from this suit and that defendants and each of them be thenceforth restrained from taking any further or other proceedings against plaintiffs in respect of said goods or the proceeds thereof.

22. This order to be without prejudice to any claim by defendants or either of them for payment out of Court or for the suit to proceed in either of their names as plaintiff or for an issue to be tried.

23. This order to be treated as made on the first hearing under Order XXXV, Rule 4(1)(a) of the Civil Procedure Code. Liberty to apply.

24. The Draft decree is to be submitted to me before it is passed and entered.

25. Notice of this order is to be given to both claimants, defendants 1 and 2.