

(1934) 02 BOM CK 0008
In the Bombay High Court
Case No : O.C.J. Suit No. 985 of 1933

Kodoomal Jethanand Wadhwa

APPELLANT

Vs

Hiranand Vishindas

RESPONDENT

Date of Decision : 27-02-1934

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 3 Rule 1

Citation : AIR 1934 Bom 450 : (1934) 36 BOMLR 987

Hon'ble Judges : Mirza, J

Bench : Single Bench

Judgement

Mirza, J.—This is a notice of motion taken out on behalf of defendant No. 2 applying for an order that an order made by this Court on December 14, 1933, so far as it relates to defendant No. 2, may be vacated and the plaintiffs' notice of motion dated August 4, 1933, on which that order was made, be dismissed as against defendant No. 2. The notice of motion dated August 4, 1933, was against both the defendants to this suit. It was for an order that the defendants and each of them be restrained by an order and injunction of this Court from proceeding with a certain suit which was filed against the plaintiffs in the Court of the District Judge at Quetta in so far as that suit related to the contracts which were the subject-matter of this suit and/or the accounts between the parties in respect thereof and/or from filing or proceeding with any other suit which the defendants or any of them might contemplate against the plaintiffs in respect of the contracts the subject-matter of this suit and/or the accounts between the parties in respect thereof. This notice of motion was duly served on defendant No. 2 on August 25, 1933. It came on for argument before Mr. Justice Rangnekar on September 21, 1933, when defendant No. 2 did not appear and defendant No. 1 only appeared. Defendant No. 1 raised a contention that he was an agriculturist within the meaning of the Dekkhan Agriculturists' Relief Act and the suit and proceedings could not on that account be maintained. The plaintiffs did not apply for the notice of motion to be made absolute against defendant No. 2 who was absent, because of this contention on behalf of defendant No. 1 under the

Dekkhan Agriculturists" Relief Act. The learned Judge referred the matter to the Commissioner to ascertain and report the income of defendant No. 1 from agricultural and non-agricultural sources respectively during a certain period. Pending reference to the Commissioner the notice of motion stood adjourned sine die. Defendant No. 1 absconded from Bombay and did not proceed with the reference before the Commissioner. Thereupon, the Commissioner made a report to the effect that there were no materials before him on which to say what the income of defendant No. 1 from agricultural and non-agricultural sources respectively was, and the onus being on defendant No. 1 to show what his income was he had failed to discharge that onus. The plaintiffs' attorneys thereafter applied to the Prothonotary to have the notice of motion brought on before the Commercial Judge as this suit has been filed as a commercial cause. The notice of motion came before me as the Commercial Judge on December 14, 1933, when defendant No. 2 did not appear and defendant No. 1 appeared by counsel and applied for an adjournment on the ground that the time allowed for filing exceptions to the Commissioner's report had not till then expired. I refused the application and made the notice of motion absolute against both the defendants.

2. Prior to December 14, 1933, Mr. Karanee, who was already an, attorney on the record for defendant No. 1, had, on December 11, 1933, filed an appearance in this Court in this form:

Please enter an appearance on behalf of the 2nd defendant in the above suit for the purpose of only obtaining directions on the Chamber Summons taken out by the plaintiffs.

After filing this appearance, Mr. Karanee appeared before me in chambers on behalf of both the defendants; on certain directions which were given on the chamber summons for directions. He did not call my attention to the fact that he was appearing for defendant No. 2 for a limited purpose only. It does not appear that in filing this appearance Mr. Karanee called the attention of the Prothonotary to its unusual nature, and it does not appear that he informed Messrs. Payne & Co., who are attorneys on record for the plaintiffs, that he was acting on behalf of defendant No. 2 for this limited purpose only. There seems to be no warrant under the CPC or the High Court Rules or the practice of this Court for this limited kind of appearance by attorneys in an ordinary cause in the list as the present case is. Rule 875 of the High Court Rules is in this form:

No attorney shall be at liberty to withdraw from the conduct of any suit or matter without a written order for that purpose from the Court or a Judge thereof, and shall be responsible for Court-fees until such order is filed.

The rule, in my judgment, clearly contemplates that the attorney who files his appearance on behalf of a litigant in a pending suit is to act for him throughout those proceedings unless prior to his withdrawal he has obtained a discharge by an order of the Court or a Judge. Rule 116 of the High Court Rules is in this form:

The defendant, shall, on or before the day fixed in the writ of summons for the

filing of his written statement, if such be called for, or otherwise before the date fixed for his appearance, file with the Prothonotary and Senior Master an appearance; in default of this the suit will be set down as undefended....

This rule, too, in my judgment contemplates that the appearance once filed is to remain in force until the proceedings are over. The party who wishes an attorney to appear on his behalf and to relieve him of the necessity of filing an appearance in person cannot be allowed to make a convenience of the machinery of this Court by authorising the attorney to act for a limited purpose only.

3. Mr. Vakeel, on behalf of defendant No. 2, has relied upon Order III of the Civil Procedure Code. Order III, Rule 1, provides as follows:

Any appearance, application or act in or to any Court, required or authorised by law to be made or done by a party in such Court, may, except where otherwise expressly provided by any law for the time being in force, be made or done by the party in person, or by his recognized agent, or by a pleader appearing, applying or acting, on his behalf....

This rule is intended primarily for the mofussil Courts. I do not agree with Mr. Vakeel's contention that it has the effect of authorizing an attorney of this Court to file an appearance for a limited purpose only in an ordinary cause under the original civil jurisdiction of this Court. The attorney cannot, in my judgment, be allowed by the use of such device to, obviate the necessity of obtaining under the High Court Rules a discharge from the Court or a Judge of the obligation he is under to act for the party till the termination of the proceedings. Unless a proper case for discharge is made out, it is conceivable that the Court or a Judge may refuse the discharge and thus compel the attorney to continue to act for the party on whose behalf he has filed an appearance. Order III, Rule 4(1), on which reliance is placed by Mr. Vakeel, is as follows:

No pleader shall act for any person in any Court, unless he has been appointed for the purpose by such person by a document in writing signed by such person or by his recognized agent or by some other person duly authorized by or under a power-of-attorney to make such appointment.

In relying upon Order III, Rule 4, Mr. Vakeel was under an impression that defendant No. 2 had authorized Mr. Karanee to act on his behalf only for the purpose of obtaining directions in chambers on the chamber summons for directions. But it has transpired from a letter, dated January 11, 1934, written by Mr. Karanee to the Prothonotary, that on December 11, 1933, he had received a warrant from defendant No. 2 to act unconditionally on his behalf in respect of the present proceedings. But at that date as he represented also defendant No. 1 he thought that there might thereafter arise a conflict of interest between the two defendants in the suit and he might have to apply for a discharge from acting for one or the other of them. He had, therefore, used his own discretion to appear on behalf of defendant No. 2 for the limited purpose of obtaining directions only.

4. On December 19, 1933, Mr. Karanee obtained an order discharging him from acting on behalf of defendant No. 1. On January 29, 1934, he filed a fresh appearance on behalf of defendant No. 2 in this form : "Please enter an appearance on behalf of the 2nd defendant in the above suit limited until and exclusive of the hearing of the suit." In my opinion both this and the previous appearance filed by Mr. Karanee are improper and should be disallowed.

5. The contention on behalf of defendant No. 2 is that on December 14, 1933, Mr. Karanee was not defendant No.2's attorney and defendant No. 2 had no notice that the notice of motion was to be argued on that date. The notice of motion was first argued on September 21, 1933, when defendant No. 2 was properly before the Court. Knowledge of the order then made must be imputed to him although he was absent. The notice of motion having been adjourned sine die, defendant No. 2, in my opinion, was under a duty to keep a diligent watch on the boards of this Court for the notice of motion to appear for final disposal. If he did not authorise an attorney of this Court to keep such a watch on his behalf, he ought to have done it personally. He cannot take advantage of his own negligence if he has failed to keep a watch on the boards of this Court.

6. [His Lordship then discussed the merits of the application, and in order not to give defendant No. 2 any cause of complaint, vacated the order made against him on December 14, 1933.]