
(1931) 04 CAL CK 0015
In the Calcutta High Court

Secy. of State

APPELLANT

Vs

Golabrai Paliram

RESPONDENT

Date of Decision : 16-04-1931

Acts Referred:

Citation : AIR 1932 Cal 146

Hon'ble Judges : Rankin, C.J;Pearson, J

Bench : Full Bench

Judgement

Rankin, C.J.—In this case, the plaintiffs sued the Secretary of State for India in Council in respect of two consignments of jute which they delivered to the railway at Poradah station for carriage to Cossipore Road station, both these stations being outside the ordinary original civil jurisdiction of this Court. It was found, according to the plaint, that the jute had been damaged by fire on 21st March 1927 and the plaintiffs sued for a sum of Rs. 11,000 putting their case as of damages, first of all, for the railway's failure to deliver the jute and, secondly, for the misconduct of the railway in not taking reasonable care of it. The defendant, the Secretary of State for India in Council, having been served with the writ of summons took out a summons dated 9th April 1930 requiring the plaintiffs to attend before the Judge for an order that the "leave granted under Clause 12, Letters Patent, to file the plaint in the above suit in this Hon"ble Court be revoked and that the plaint be taken off the file."

2. Now, it appears that this application was put upon two grounds. First of all,, it was said that the Court had no jurisdiction to entertain the suit because the Secretary of State for India in Council did not carry on business within the jurisdiction and no part of the plaintiffs' cause of action arose within the jurisdiction; and secondly, it was said that the plaintiffs' claim was barred by limitation being governed by Article 30 or Article 31 of the Schedule to the Limitation Act, which prescribes a period of one year for the purpose of bringing a suit.

3. I do not doubt that in a proper case an application to revoke the leave granted

under Clause 12, Letters Patent, may be entertained by the Court. I do not doubt also that, in a case where the] plaint discloses a clear case of the suit! being barred under the Limitation Act, it is open to a party to treat the suit as one which ought never to have been brought and ask the Court acting under Order 7, Civil P.C., to take the plaint off the file and return it to the plaintiff for amendment. In this case, the parties! when they got before the learned Judge appear to have laid before him and entered into a discussion on several extremely difficult and far-reaching questions--questions which, to my way of thinking may turn out--I do not say they do--to depend upon facts or are at least questions of mixed fact and law.

4. The first question is whether it can be said that the Secretary of State for India in Council is a person who carries on business within the meaning, of that expression in Clause 12, Letters Patent. According to certain rulings he can never carry on business. The other view of the case law is that at the time of the previous decisions the Secretary of State was not in fact carrying on business as distinct from carrying on the necessary work of governing the country. The view taken by the learned Judge is that at all events under modern conditions the old rulings holding that the Secretary of State for India in Council does not carry on business no longer apply. That seems to me to be a most important question and a question which on the face of it depends to some extent, on facts.

5. The learned Judge has held that as there is a provision in the Indian Railways Act which says that the plaintiffs cannot recover damages unless they give a certain notice which they had to give in this case in Calcutta that notice is a part of the cause of action and therefore a part of the plaintiffs' cause of action arose in Calcutta. Learned Counsel for the defendant contests that proposition very strongly. It is a proposition which has been accepted by the learned Judge. Again the learned Judge has held that Art 115, Lim. Act, is applicable. It does seem to me rather monstrous that in a case where there is a serious question on these points to be decided it should be raised by an application to take the plaint off the file. If there is anything to try it {should be tried out by a proper hearing of the suit-upon properly framed pleadings, Suppose for example that we were to "hear this appeal and in effect dismiss the suit would it be anything short of ludicrous if the correctness of *Doya Narain v. Secretary of State* [1887] 14 Cal. 256 should go before the Privy Council on a question whether or not the plaint should be taken off the file. Would it not be absurd if we referred the question to a Full Bench? The decisions of the learned Judge may be right or wrong but are the plaintiffs who say that he is right to be told by this Bench that their case is not even to be entertained and that they will not be allowed to go to trial. The more I examine this case the more it becomes evident that the matter should not have been dealt with at the stage at which it has been dealt with. The {proper course is to dismiss the application to take the plaint off the file and to direct that the case do proceed on all points in the usual way. After it has proceeded to written statement and discovery it would be open to either party to apply for determination of the issues as preliminary issues--always provided that

either party is given a proper opportunity to adduce any evidence bearing upon any of the issues that are framed. I do really protest against questions of difficulty and importance being) dealt with by an application to revoke the leave under Clause 12, Letters Patent and to take the plaintiff the file. Normally it is well settled that the proper way to plead to the jurisdiction of the Court is to take the plea in the written statement and as a substantive part of the defence. Except in the clearest cases that should be the course. In the same way it is not upon an application of this character that we are to enter into the question whether the learned Judge was right or wrong in his view as to the requirement of notice to the defendant. As regards the question of limitation if there is any serious point to be considered as between Articles 30, 31 and 115 it is much better that it should be considered upon facts than that it should be dealt with ex facie of the plaint as a matter of pleading.

6. The result is that while the actual order of the learned Judge in so far as it dismisses the application will be maintained, the decisions in the judgment of the learned Judge are in my opinion not to be maintained. They may be right; they may be wrong. The matter must be gone over again at the proper time and upon proper materials. The learned Judge who will deal with these points will not be bound by opinions expressed in the judgment under appeal. I do not propose to try to solve the difficulties in advance. The matter will be entirely open to him. At the same time it will be entirely open to the parties to adduce evidence upon the questions. As regards costs as the plaintiffs did nothing to object to these matters being dealt with on the summons the costs before the learned Judge and of this appeal will be costs in the cause.

Pearson, J.

7. I agree.