

(1967) 11 BOM CK 0001
In the Bombay High Court
Case No : O.C.J. Suit No. 225 of 1967

Shevaram Thadaram Jaisinghani	Vs	APPELLANT
Indian Oil Corporation Ltd.		RESPONDENT

Date of Decision : 14-11-1967

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 121, 122, 129

Citation : (1968) MhLj 748

Hon'ble Judges : J.R. Vimadalal, J

Bench : Single Bench

Advocate : A.N. Modi, for the Appellant; R.P. Bhatt, for the Respondent

Judgement

J.R. Vimadalal, J.—This is a Chamber Summons taken out by the defendants for further and better particulars under Order VI, rule 5 of the Code of Civil Procedure.

2. A preliminary objection was raised by Mr. Modi to the maintainability of the Chamber Summons on the ground that it is barred by the provisions of sub-rule (2) of rule 5 of Order VI of the Code of Civil Procedure, as framed under the Rules made by the High Court u/s 122 of that Code, in so far as it has not been taken out before the returnable date of Summons which was June 26, 1967. The answer of Mr. R. P. Bhatt on behalf of the defendants to that preliminary objection raised by the plaintiff is two-fold; first that the Rules framed u/s 122 of the CPC do not apply to the Original Side of the High Court; and, secondly that, if it is held that they do apply to the Original Side of the High Court, there has been no proper service of the summons on the defendants, in view of the fact that a copy of the plaint was not served along with the summons, as required by Order V, rule 2, Civil Procedure Code, as framed under the same rule-making power contained in section 122 of that Code.

3. The point, undoubtedly, is a very narrow one, but as it raises an important question of practice which is not covered by authority, I had reserved orders on

this Chamber Summons. It is not disputed that the present Chamber Summons has not been taken out by the defendants before the returnable date of the Summons which was served upon them in this case. If Order VI, rule 5 (2), as framed u/s 122 of the Code of Civil Procedure, is held applicable to the Original Side of the High Court, this Chamber Summons must, therefore, be held to be barred as being out of time. That brings me to the first contention of Mr. Bhatt. Part X of the CPC deals with the rule-making power of the High Courts, and it is necessary for me to refer to sections 122 and 129 which occur in that Part. Section 122 confers on High Courts power to make rules regulating their own procedure, as well as the procedure of Courts subordinate to them. The question which arises is whether the power conferred on the High Court by the said section to frame procedural rules for itself should be construed as limited by the context in which it occurs. In other words, the question is whether the reference to subordinate Courts in the said section should be held to indicate that power is conferred on the High Court to make rules for itself, only in relation to subordinate Courts, and not in regard to its Original Side. I am not prepared to read any such limitation into the plain meaning of the expression "High Courts" which, in my opinion, must be construed to mean High Courts in regard to their entire jurisdiction. In the case of High Courts which have Original Jurisdiction, that expression must, therefore, be held to include that jurisdiction also. It would, of course, be open to the High Court to frame a rule u/s 122 for regulating the procedure of any particular Court or Courts subordinate to it, or of its own Original Side or Appellate Side only, but, in that event, the High Court must in specific terms restrict the applicability of such a rule in the manner desired. The next contention is that, in view of the fact that section 129 confers an express rule-making power on High Courts in regard to their Original Civil Jurisdiction, section 122 must be read as applying to all jurisdiction other than Original Civil Jurisdiction, as section 129 would otherwise be rendered superfluous. I am afraid, there is no substance in that contention, for the simple reason that the ambit and extent of the rule-making power contained in those sections is different. It is expressly stated in section 122 that the Rules framed by the High Court under that section can annul, alter or add only to the Rules contained in the First Schedule to the Civil Procedure Code. The necessary implication of that provision is that they cannot be inconsistent with the body of that Code. Section 129 of the Code of Civil Procedure, on the other hand, confers on the High Court power to frame rules to regulate the procedure on its Original Civil Side, with only this limitation that they must not be inconsistent with the Letters Patent, or other law, establishing the High Court in question. It must, therefore, follow that they could be inconsistent with everything else, including even the body of the Civil Procedure Code. The third type of rule-making power is to be found in clause 37 of the Letters Patent by which this Court was established. Clause 37 confers power on this High Court to make rules for the purpose of regulating all civil proceedings before it, which must, as a matter of plain language, include proceedings both on the Original Side as well as the Appellate Side of the High Court. The only restriction which clause 37 imposes, if

restriction it can be called, is that, in making such rules, the High Court should be "guided", "as far as possible", by the provisions of the Code of Civil Procedure, which, having regard to section 121 of that Code, would mean the body of the Code as well as the Rules contained in the First Schedule thereto.

4. A careful analysis of the rule-making power contained in these three provisions therefore shows that they overlap to a considerable extent, in so far as rules for regulating the procedure on the Original Civil Side of the High Court, which is the question with which I am concerned on the present Chamber Summons, could be framed u/s 122 or u/s 129 of the Code of Civil Procedure, or under clause 37 of the Letters Patent. It must not, however, be forgotten that, whilst a rule framed u/s 122 for regulating the procedure on the Original Civil Side of the High Court cannot be inconsistent with the body of the Code, a rule framed u/s 129 of the same Code could be inconsistent therewith. A rule framed under either of those sections can, however, be inconsistent with the rules contained in the First Schedule to the Code of Civil Procedure. As far as the rule-making power contained in clause 37 of the Letters Patent in regard to the Original Civil Side is concerned, the situation may best be expressed by stating that a rule framed thereunder should not, as far as possible, be inconsistent with the provisions contained in the body of the Code of Civil Procedure, or in the First Schedule thereto. The ambit and extent of the rule-making power contained in each of these provisions is, therefore, different. The mere fact that section 129 of the CPC expressly confers the power to frame rules for regulating the procedure on the Original Civil Side of the High Courts cannot lead to the conclusion that no such rules can be framed u/s 122 of the same Code. In fact, Order XXXVII, rule 1, as recently amended and framed u/s 122 of the Code of Civil Procedure, has expressly made the provisions of Order XXXVII {as amended} applicable to the High Court, which must mean the Original Side of the High Court. That could not possibly have been done if the High Court had no power u/s 122 to make the same applicable to proceedings on its Original Side. In the result, I have come to the conclusion that the provisions of Order VI, rule 5 (2), as well as of Order V, rule 2 as framed under the rule-making power contained in section 122 of the Code of Civil Procedure, are applicable to proceedings on the Original Civil Side of this Court also.

5. In that view of the matter, it must be held that the Summons in the present case has not been properly served on the defendants, in so far as it was admittedly not accompanied by a copy of the plaint as required by Order V, rule 2, as framed u/s 122, Civil Procedure Code. No question of the present Chamber Summons being barred by reason of its having been filed before the returnable date of the Summons can arise, since the Summons itself has not been properly served, as already stated by me. The preliminary objection raised on behalf of the plaintiff to the present Chamber Summons must, therefore, be rejected.

[The Court then proceeded to make the Chamber Summons absolute in respect of certain items.]

Solicitors for plaintiff-Tyabji Dayabhai and Co. Solicitors for defendants-
Amarchand and Mangaldas