

(1963) 12 CAL CK 0017
In the Calcutta High Court
Case No : Matter No. 33 of 1963

S.P. Ghose

APPELLANT

Vs

Deputy Controller, Reserve Bank of India

RESPONDENT

Date of Decision : 20-12-1963

Acts Referred:

Constitution of India, 1950 — Article 9

Foreign Exchange Regulation Act, 1947 — Section 2, 2(1), 20(3), 5, 8

Citation : AIR 1964 Cal 422 : (1964) 1 CALLT 191 : 68 CWN 914

Hon'ble Judges : D.N. Sinha, J

Bench : Single Bench

Advocate : Aloke Gupta and A. Sen Gupta, for the Appellant; Subrata Roychoudhury and J. Banerjee, for the Respondent

Judgement

D.N. Sinha, J.—The facts in this case are shortly as follows: The petitioner S. P. Ghosh was born at Diamond Harbour in India on the 1st February, 1930. In or about October, 1950 he went to the United Kingdom for his education. In August, 1980 he applied for registration as a citizen of the United Kingdom and the application being accepted he became a citizen of the United Kingdom on and from the 26th September, 1980. He has married in England. In or about September, 1960 the petitioner entered into a contract of service with Messrs. Wacneil Barry Ltd., for three years, renewable for subsequent term or terms. Under the terms and conditions of the said agreement, the petitioner is required to stay in India as long as the contract subsists. The petitioner came to India in February, 1981 and joined his post at Calcutta. Sometime in August, 1980 the petitioner's wife Mrs. Margaret Ghosh had written to the Reserve Bank of India, Exchange Control Department, Central Office, Bombay, asking for information as to whether exchange facilities were granted to British nationals temporarily resident in India. I have seen the original letter, which does not give any particulars and makes no mention of the petitioner or the circumstances under which he, an Indian national by birth had become a national of the United Kingdom. On the 12th August, 1980 the Assistant Controller of the Reserve Bank

of India, in its Exchange Control Department, Bombay, wrote back to say that reasonable exchange facilities were granted to British nationals temporarily resident in India to enable them to make remittances from their current income for family maintenance or savings in U. K. He further recommended that the remitter should contact his bankers for the necessary remittance facilities. The letter also contains the information that a British-born wife of an Indian national was treated as an Indian national for exchange control purposes. Sometime in May, 1962 the petitioner instructed his Bankers, Messrs. National and Grindlays Bank Ltd., Lloyds Branch, Chowringhee, Calcutta, to make arrangements for remittances to be sent to the United Kingdom. The petitioner filled in a declaration form, which is prescribed for that purpose, and a copy of it is annexure "A" to the supplementary affidavit affirmed by the petitioner on the 28th November, 1983. In that form, the petitioner mentioned his "nationality" as a "British subject, citizen of the United Kingdom and colonies". Against the entry "country of domicile", he mentioned "United Kingdom". Entry Nos. 4 and 11 are important and are set out below: --

"4.

If country of domicile declared under (3) above is other than India, please state briefly the grounds on which the claim is based. (Nature of connections of assets including house or other property owned in the country should be furnished, together with any other facts which in applicant's opinion establish his claim to non-Indian domicile).

Bank account.

11.

Country to which remittances are desired to be made, purpose for which the remittances are desired and the scale of remittance-(Please give average monthly amount to be remitted.)"

United Kingdom, family maintenance & Personal Savings (Building Society) Rs. 1350.00 per month.

2. In the said declaration, the petitioner mentioned, that he was born in India and resided there until he was 20 years of age and had gone to the United Kingdom for "education and employment." The average net monthly income of the petitioner was declared to be Rs. 1627/-, and as stated above, he wanted to send Rs. 1350/- per month to the United Kingdom. He also mentioned that he had a British Passport. The petitioner's Bank referred the matter to the Reserve Bank of India. On or about 7th July, 1982 the Reserve Bank of India advised the petitioner's Bank that for exchange control purposes the petitioner was to be considered as of Indian domicile, and as such he could not be allowed to avail himself of remittance facilities in terms of Para. 2 (1) of Section 11 of the Exchange Control Manual. An application by the petitioner might, however, be considered if he made it in the prescribed form appropriate for a person of Indian

domicile who wishes to make a remittance to the United Kingdom for the maintenance of his family residing in the United Kingdom. The petitioner thereafter carried on correspondence with the Assistant Controller of Exchange, of the Reserve Bank of India in Calcutta, and took up the stand that he was a British national and was not domiciled in India. He mentioned that he had no intention of residing in India permanently or otherwise. On or about the 21st September, 1962 the Deputy Controller of the Reserve Bank of India replied by stating that the decision already made could not be reconsidered. Thereupon, the petitioner made this application and the Rule was issued. The petitioner in this application has asked for a writ in the nature of mandamus or an appropriate writ asking the respondent, the Deputy Controller, Reserve Bank of India, Exchange Control Department, to cancel or rescind the decision to treat the petitioner as of Indian domicile, and depriving him of the remittance facilities permissible under Para. 2 (1) of Section XI of the Exchange Control Manual, and further to direct the said respondent to allow remittance facilities in terms of the said paragraph and section of the said Manual.

3. The Foreign Exchange Regulation Act, 1947 (Act VIII of 1947) is an Act to regulate certain payments, dealings in foreign exchange and securities and import and export of currency and bullion. It is permissible to look into the objects and reasons for passing the Act, in order to discover the background and the evils which it was intended to remedy. It is stated in the objects and reasons that a system of exchange control was set up in India on the outbreak of the Second World war, in September, 1939, for the purpose of conserving and directing to the best uses, the limited supplies of foreign exchange available. Upon the termination of the War, it was found that the shortage of foreign exchange was likely to continue in view of the disruption of the internal economy of so many nations, and the interruption of the established channels of trade. Legislation was, therefore, necessary to give the Central Government powers to continue to control all transactions in foreign exchange, securities etc. The original Act was a temporary one but it has been found that India continued to be short of foreign exchange and it was difficult to visualise that in any foreseeable future it would be possible to dispense with the Exchange Control altogether. Various Five Years Plans have made it necessary to husband and utilise all our external resources, and consequently for these various reasons the Foreign Exchange Regulation Act (hereinafter referred to as the "said Act") has been placed on a permanent footing. Section 4 of the said Act imposes restrictions in dealing with foreign exchange. It provides that except with the previous general or special permission of the Reserve Bank, no person other than an authorised dealer shall deal in foreign exchange. Section 5 of the said Act puts restrictions on payments. It inter alia provides that no person in India shall make any payment to any person resident outside India) save as may be provided in, and in accordance with, any general or special exemption granted conditionally or unconditionally by the Reserve Bank. This is a very sweeping restriction and it is interesting to recall the words of Lord Goddard C. J. in Pickett

v. Fesq (1949) 2, All E R 705 dealing with the corresponding provisions of the English Act, being Exchange Control Act, 1947 :--

"It may not generally be known how rigid and far-reaching are the provisions of the Exchange Control Act, 1947. It has been pointed out by high authority that if a person plays a game of cards in this country with a person who does not live in one of the scheduled territories -- as for instance, an American --and at the end of the game he hands in five shillings which he has lost to him, he is really committing an offence. I do not suppose that in these circumstances anybody would say that a serious offence has been committed or that there would be likely to be a prosecution but the Act is wide enough to cover such a case."

4. Unless there is a general or special exemption by the Reserve Bank) there is an absolute prohibition for persons in India or resident in India from making any payment to, or for persons resident outside India, either directly or indirectly by crediting their account, whether in rupees or foreign currency. Sub-section (2) of Section 8 of the said Act provides that no person shall, except with the general or special permission of the Reserve Bank or the written permission of a person authorised in this behalf by the Reserve Bank take or send out of India any foreign exchange other than foreign exchange obtained by an authorised dealer. Sub-section (3) of Section 20 confers a right on the Reserve Bank to give directions in regard to the making of payments by authorised dealers who are authorised by the Reserve Bank to do anything in pursuance of the said Act in the course of their business, as appear to it to be necessary or expedient for the purpose of securing compliance with the provisions of the said Act and any rules, orders or directions made thereunder. Such directions have been given from time to time by the Reserve Bank and these statutory instructions" issued by the Reserve Bank of India under the powers vested in them by Sub-section (3) of Section 20 of the said Act are to be found in the Exchange Control Manual. The relevant directions are to be found in Section 11 of the said Manual (4th Edn.) at page 37. They are as follows :--

"I (i) Private remittances by Indian nationals resident in India (or non-Indian nationals who are domiciled in India) for maintenance or support of families or dependents resident outside India are not ordinarily permitted. Special consideration may be given in cases where there are exceptional reasons necessitating residence of the families or dependants outside India

* * * 2 (i) Authorised dealers may allow private remittances by nationals of sterling area countries other than India who are temporarily resident but not domiciled, in India in any currency of the sterling area up to a maximum of ₹150 per month by each individual. Remittance may be allowed for purposes such as support of families, payment of insurance premia, etc., without the prior approval of the Reserve Bank, provided that the aggregate amount remitted under all heads does not exceed ₹150 per month per remitter and the transfer is made from the income earned during that month after retaining adequate funds for meeting his current expenses in the country . . ."

Applications are to be made in separate forms prescribed therefor.

5. The short point involved in this case is as to whether the petitioner is entitled to come within the scope of Section 1 (i) or 2 (i) mentioned above. According to him, he comes under Sub-section 2 (i), whereas according to the authorities he comes u/s 1 (i). To put it still more succinctly, the petitioner claims to be a British national not domiciled in India. According to the respondent, the petitioner might be a British national, but he is still of Indian domicil, that being his domicil of birth or origin, which he has not yet abandoned. It will be necessary, therefore, to consider this question of domicil a little more closely. I have already mentioned, that the petitioner was born in India and was an Indian national until he renounced that nationality in September, 1960 and acquired the citizenship of the United Kingdom. He did so u/s 6 (1) of the British Nationality Act, 1948. Under that provision, any person from the Commonwealth which includes India could become a citizen of the United Kingdom, by registration, if he had been resident in the United Kingdom for a period of 12 months prior to the application for registration. Therefore, the petitioner having complied with the very simple conditions prescribed in the statute had no difficulty in being registered as a citizen of the United Kingdom. He received a British Passport. There is, however, a great deal of difference between nationality and domicil. In private international law, it has been recognised by most civilised countries that questions affecting the personal status of a human being should be governed constantly by one and the same law, irrespective of where he may happen to be or whether the facts giving rise to the questions may have occurred. There is, however, disagreement upon the point as to whether the criterion should be domicil or nationality. "These are two different conceptions", says Cheshire in his *Treatise on Private International Law*", 6th Edn., at page 194 :

"Nationality represents a man's political status, by virtue of which he owes allegiance to some particular country; domicil indicates his civil status and it provides the law by which his personal rights and obligations are determined. (See *Udny v. Udny* (1869) 1 Sc. and Div. 441, at p. 457, per Lord West-bury). Nationality depends, apart from naturalization, on the place of birth or on parentage; domicil, as we have seen, is constituted by residence in a particular country *animo manendi*. It follows that a man may be a national of one country but domiciled in another."

6. There are two mala classes of domicil, (a) domicil of origin and (b) domicil of choice. The domicil of origin is communicated by the operation of law, to each person at birth, i, e., a domicil of his father or his mother, (depending on whether a person is legitimate or illegitimate). The domicil of choice on the other hand, may be acquired by every person of full age, in substitution for his domicil of origin. The question to be considered in this case is as to how a person may shed his domicil of origin and acquire the domicil of his choice. Before doing so, it will be necessary to be clear as to what constitutes a domicil of choice. Sir George Jessel in *Doucet v. Geoghegan* (1878) 9 Ch. D. 441 said that an absolute

definition was impossible. Nevertheless, about a hundred years ago Kindeisley V. C. propounded a definition which it is difficult to better :

"That place is properly the domicile of a person in which he has voluntarily fixed the habitation of himself and his family, not for a mete special and temporary purpose, but with a present intention of making it his permanent home, unless and until something (which is unexpected or the happening of which is uncertain) shall occur to induce him to adopt some other permanent home."

Lord v. Colvin (1859) 4 Drew 368 .

7. ""Permanent", however, does not mean "everlasting". It has, however, been affirmed several times, and more than once by the House of Lords in England that the present home of a man should not be equated with his domicile, if he contemplated some event, however, remote or uncertain, which might cause him at some indeterminate time in the future, to change his country of residence. If this possibility was present to his mind, even an intention to reside indefinitely in a place was ineffective. Moor-house v. Lord (1863), 10 H. L. C. 272, Winans v. A.G. 1904 A. C. 287, Wahl v. A. G. (1932) 147 L. T. 382.

8. In the instant case, there is no dispute that the petitioner was born in India and his father was horn in India. Therefore, India is his domicile of origin. It is true that in 1960 he registered himself as a British citizen and obtained a British Passport. He also married in England. Now the question is as to whether it could be said that sufficient facts were placed before the Reserve Bank of India to show that the petitioner had abandoned his domicile of origin and acquired a domicile of choice in the Unit-ed Kingdom. The first thing to be pointed out is that in such a case the onus lies completely upon the person alleging that he has abandoned his domicile of origin and acquired a domicile of choice, to prove the same. Before considering as to whether the facts in this case show that the petitioner had discharged that onus, it will be necessary to consider some decided cases which have demonstrated the extreme difficulty in proving that a person had abandoned his domicile of origin and acquired a domicile of choice. Mr. Roy Choudhury appearing on behalf of the respondent has cited several English cases, which I shall now proceed to consider. The first case to be cited is (1932) 147 L T 382 (Supra). The facts in that case were as follows : The deceased was born in 1952 in Germany, of German parents. His father was the head of a German commercial firm in Germany. In 1877, the deceased married a German lady and had two sons. In 1879, he came to England and after divorcing his wife settled down in England and applied for and obtained naturalisation under the Aliens Act, 1870. In his application for naturalisation he stated that he intended to reside permanently in the United Kingdom and that he had no intention of living the U. K. permanently. In 1886, the deceased married an English woman and continued to live in England. In 1890, he returned to Germany where he remained for two years. In 1893, his wife became invalid, and he took a house in England on a long lease and his wife lived there until she died. He lived there himself whenever he was in England. In 1901, his father died and he succeeded

to his father's interest in the business carried on in Germany. He spent his time mostly in Germany. In 1908 his mother died and he inherited a house in Germany. Thereafter he lived mostly in Germany but very often came to England and in 1915, he died while in England. The question arose as to the domicile of the deceased at the date of his death. Lord Atkin was of the opinion that the Attorney General had not discharged the onus of proving that the deceased had ever acquired an English domicile. He said as follows:

"I am quite unable to draw the inference that the deceased ever intended to abandon his German domicile or to acquire an English domicile. As one of your Lordships has observed, he does not appear to have severed a single tie with Germany, and I see no proof that he either had the intention or that he carried out an intention to make his principal or only home in this country. The facts, indeed seem to negative both the animus and the factum, the mind and the deed."

9. Lord Atkin noted the fact that the deceased, in his application for naturalisation had stated that he intended to continue to reside permanently in the U. K. but held that under the Aliens Act it was not necessary to make any such declaration of intention and a mere statement of intention to that effect was not enough. The learned Judge pointed out that naturalisation was one thing and the change of domicile was another. He proceeded to say as follows:

"I am far from saying that an application for naturalisation is not a matter to be carefully considered as part of the evidence in a case of domicile, but it must be regarded as one of the totality of facts, and it cannot assume the dominant importance attached to it in the judgment of the trial Judge."

10. Lord Macmillan, who dissented from the majority judgment did not feel very confident of his own opinion. He however, laid down a very important test and said as follows :

"But in these days it is by no means uncommon for a person to have interests in more than one country, and the question of legal domicile in such cases must always depend on where the person concerned chose to make the real focus of his existence."

11. The next case to be considered is another decision of the House of Lords 1904 A C 287 (Supra). In that case, it was clearly laid down that the onus of proof that a domicile has been chosen in substitution for the domicile of origin lies upon him who asserts it. The domicile of origin continues unless a fixed and settled intention of abandoning the first domicile and acquiring another as the sole domicile was clearly shown. The facts in that case were as follows: Mr. Winans was born in the United States in 1823, where he resided with his father until 1850. His father was a railway contractor and Mr. Winans joined the business. In 1850, he went to Russia, where he was employed by the Russian Government in equipping their railways on the American system. In Russia, he married a Guernsey lady. In 1859, his health broke down and he came over to England. In

1860, he took a house at Brighton. He lived in England for a long time, nearly 38 years, and died there. Lord Macnaghten said as follows :

"There is, I think, hardly any branch of law which has been more frequently or more fully discussed in this House in comparatively modern times than the law of domicile. Difficulties have arisen, and difficulties must arise now and then, in coming to a conclusion upon the facts of a particular case. But these difficulties) as Lord Cottonham said, are "much diminished by keeping steadily in view the principle which ought to guide the decision as to the application of the facts."

"Domicil of origin", or as it is sometimes called, perhaps less accurately, "domicil of birth," differs from domicile of choice mainly in this--that its character is more enduring, its hold stronger, and less, easily shaken off."

In spite of the long residence in England by Mr. Winans, it was held that it had not been satisfactorily proved that he had abandoned his domicile of origin.

12. In *Munro v. Munro*, (1840) 51 R R 103. Lord Cottenham observed that the domicile of origin. must prevail until the party had not only acquired another, but had manifested and carried into execution an intention of abandoning his former domicile and acquiring another as his sole domicile. According, to the learned Judge, residence alone has no effect per se, though it may be of great importance as a ground from which to infer an intention. Lord Cairns L. C. held in *Bell v. Kennedy*, (1868) 1 H L Sc 307 that it was beyond all doubt clear with regard to the domicile of birth that the personal status indicated by that term, clings and adheres to the subject of it until an actual change is made by which the personal status of another domicile is acquired. The onus of proving that a domicile has been chosen in substitution for the domicile of origin, lies upon him who asserts that the domicile of origin has been lost. Lord Chelmsford said in (1869) 1 Sc & Div 441 (Supra) that in a competition between a domicile of origin and an alleged subsequently acquired domicile, there may be circumstances to show that however long a residence may have continued, there was no intention of acquiring a separate domicile. The question in such a case is not whether there is evidence of an intention to retain the domicile of origin, but whether it is proved that there was an intention to acquire another domicile. The intention must amount to a "fixed and settled purpose."

13. Mr. Roy Chowdhury has next cited the case of (1868) 1 H L Sc 307 (Supra). The facts in that case were as follows: The appellant's parents had come from Scotland and had settled in Jamaica. His father owned and cultivated an estate there called the Woodstock Estate. The appellant was born in Jamaica. He was educated in Scotland. When he was 21 years of age, he went back to Jamaica in the year 1823, and continued to farm the Woodstock Estate. He attained a position in the island and became a member of the Legislative Assembly. He married in Jamaica in the year 1828 and had three children. In the year 1834, a change was made in the law with regard to slavery in the island of Jamaica, culminating in the year 1838 into complete emancipation. Mr. Belt looked upon

this change with considerable disfavour, and he was determined to leave Jamaica and return to Great Britain. In 1837 he sold his estate in Jamaica and left the island declaring that he was "leaving it for good". After a short stay in England he went to Edinburgh and began to reside with his mother-in-law. While at Scotland he acquired certain estates there. The evidence showed that he was writing letters from Scotland complaining of its cold climate and nursed the hope of going back to Jamaica. He also complained of the high prices in Great Britain. He also toyed with the idea of going to south of France or even Australia. Upon these facts, it was held that the appellant had not abandoned his domicile of origin. Mr. Roy Chowdhury has next cited a decision of the Supreme Court. Central Bank of India Vs. Ram Narain, . The facts in that case were as follows: The respondent Ram Narain carried on business and resided at Mailsi in the district of Multan, which after partition fell into West Pakistan. During the disturbances that followed in the wake of partition, he sent away his family to India and sometime thereafter he himself wound up his affairs at Mailsi and migrated to India and settled down at Hodel in the district of Gurgaon. While at Mailsi, he had transactions with the Central Bank of India, and after he came back to India the Bank tried to proceed against the respondent for offences alleged to have been committed by him in Pakistan when he was living there before migrating to India himself. The question was whether at the time of the commission of the alleged offences it could be said that the respondent had acquired Indian domicile. It was not disputed that Ram Narain's domicile of origin was in the Multan district in West Punjab, where he and his ancestors lived till his migration to India. It was argued that after the partition, no Hindu or Sikh could possibly remain in West "Pakistan and that the fact that he sent his family to India and shortly thereafter himself migrated showed that he must have had the intention of doing so right from the beginning. It was held by Mahajan C. J. the none of these facts proved that at the relevant time the respondent had changed his domicile of origin and acquired an Indian domicile. The learned Judge said as follows :

""In these circumstances, if one may use the expression, Ram Narain's domicile of origin was in the District of Multan and when the District of Multan fell by the partition of India in Pakistan, Ram Narain had to be assigned Pakistan domicile till the time he expressed his unqualified intention of giving up that domicile and acquiring the Indian domicile and also took up his residence in India. His domicile cannot be determined by his family coming to India and without any finding that he had established a home for himself there. Even if the animus can be ascribed to him the lactum of residence is wanting in his case and is the absence of that fact an Indian domicile cannot be ascribed to Bam Narain. A subsequent acquisition by ham Narain of Indian domicile cannot affect the jurisdiction of the Court for trying him for crimes committed while he did not possess an Indian domicile."

14. While all these are cases where it has been held that a person had not abandoned his domicile of origin, it will be interesting to consider a case where it

has been held that he had. This is to be found in a decision of Michael Anthony Rodrigues Vs. State of Bombay and Others, . The facts in that case were as follows : The appellant's father was by nationality a Goa. He had been carrying on business as a tailor in Bombay for about 40 years. The appellant was born in Goa in 1918, but he came to Bombay in 1927, when he was 9 years of age and never went back. He was educated in Bombay and having completed his school education in 1936 he joined the business of his father in 1942. When the war broke out he served in the Royal Indian Force and obtained a Burma medal. In 1948 he was retrenched from service and he gave his permanent address as Bombay. From May 1947 to September 1948 he served under some persons in Bombay but in 1948 he reverted to his father's business. He appeared on the municipal roll as a voter. It was held that the appellant had abandoned his domicil of origin and had acquired the Indian domicil. Chagla C. J. said as follows :--

"But although a person may have a domicil of origin, he may acquire what is known as a domicile of choice and that he can only acquire by a conscious act. He must not only give up the country of his origin but he must make up his mind to stay for an indefinite period in the country where he wants to acquire the domicile of choice. Therefore, when the appellant wishes to establish that his domicile of choice is in India, he has to establish the fact of residence in India and he has also got to establish the animus of intending to reside permanently or for an unlimited time in India.

It has been said that the character of the domicile of origin is of an enduring character and the ties that bind you to your country of origin are extremely strong, and therefore the authorities require that the intention to acquire a new domicile must be manifest and carried into execution. The authorities also require that the person acquiring the domicile of choice must show a fixed and settled purpose of residing permanently or for an indefinite time in the country where he seeks to acquire the new domicile. It is equally true that the burden cannot be discharged by merely proving residence however long the duration of the residence may be."

15. I will now come back to the facts of the present case. I have already mentioned that it is not disputed that the petitioner acquired British nationality in 1980 and holds a British Passport. He has married in England and his wife resides at present in England. It has been pointed out above that nationality and domicil are different concepts. The whole question here is as to whether the petitioner placed sufficient facts before the Reserve Bank of India whereby it could be said that he had discharged the onus of proving that he had abandoned his domicil of birth or origin and had acquired a domicil of choice, in the United Kingdom. I have already mentioned that in the declaration form dated 24th May, 1962 which he submitted to the Reserve Bank of India, clause (4) requires the declarant to state the grounds on which it was claimed that the applicant was of foreign domicil. Various informations are required namely, assets or house

property owned in the country of domicile or any other fact which goes to establish it. The sole fact upon which the petitioner relied was his "Bank account". At the relevant time, he had a Bank account with Messrs. Lloyds Bank Ltd., at Manchester. According to him, it is the sole evidence which should prove his British domicile. Mr. Gupta has argued that although the petitioner may have made this entry in his declaration form, there do exist other evidence of his domicile. He refers to the fact that the petitioner had a British Passport and he strongly relies on the answer given by the petitioner against Clause (11) in the declaration form. All that he has mentioned therein is that he wanted remittances to be made to the U. K. for family maintenance and personal savings. Against the latter, he mentioned the words "Building Society". In an affidavit filed before the he has further enlarged on the subject and states that his intention was to put his personal savings in the saving accounts of the Dudley Building Society, Dudley Co., Worcestershire, with the ultimate aim of purchasing a house or property in the U. K. He further explained that Building Societies in the U. K. do give facilities to persons who have an ultimate aim of purchasing houses or properties in the U. K. by maintaining deposit accounts with them for that purpose. In my opinion, this evidence had not been placed before the Reserve Bank of India and ought not to be taken into account. But even if it is taken into account, it does not advance matters. All that it shows is that the petitioner wanted to send money to U. K. for being deposited in a savings account with a Building Society. The terms on which the Building Society accepts such deposits are not disclosed. It is said that the intention was to buy land or houses in future. It may be that the petitioner might not be able to deposit enough money in the said account for such a purpose. Then again, he might change his mind and not utilise the savings in the purchase of land or house in the U. K. or it he does purchase such land or house, it may be for the purposes of letting out the same and not for residing therein. The mere fact that the petitioner was trying to save some money to be put into a savings account with a Building Society in the U. K. cannot establish an irrevocable intention of abandoning his Indian domicile, which is his domicile of birth, and of acquiring a foreign domicile. It will appear from the various authorities cited above, that neither long residence, nor marriage in a particular country, nor even the fact of acquiring properties therein, suffice in themselves to establish an intention of abandoning the domicile of origin and acquiring a domicile of choice. On the other hand, Mr. Roy Chowdhury has rightly pointed out that the petitioner has not even now supplied the court with the necessary evidence. For example, he has not stated as to the particulars of his parents and relations in India. He has not put the court in a position to determine as to whether he has made a final determination to cut himself off from his family. He has not mentioned where his wife resides in England, that is to say, whether in a tenanted house or one with a long lease or merely a monthly tenancy. Mr. Roy Chowdhury has also pointed out that while the petitioner has stated his total income in India to be Rs. 1627/- per month he has asked for Rs. 1350/- per month to be transmitted to the U. K. That leaves him only with a balance of Rs. 277/- per month. This is utterly inadequate for

anybody to live in a city, and it is to be remembered that the petitioner has given a Theatre Road address in his petition. Without further evidence, the indications are that he has private means. The particulars of such private means have not been disclosed. On the other hand, the fact that he has started his career by coming back to India and taking a post there, in a business firm carrying on business in India indicates that he had no intention of abandoning his domicile of birth. Mr. Gupta has emphasised the fact that the contract was made in the U. K. and it was only for three years. The fact that the contract was made in the U. K. proves nothing. It is well-known that a person who manages to get an appointment in the U. K. gets a higher salary and this is often done to achieve a higher income. Then again, the fact that the contract is for three years loses its significance because it is renewable. These contracts are ordinarily renewed, and there is no reason to think that the petitioner would enter a leading firm in Calcutta, only for the purpose of staying there for a short period. In fact, the petitioner has given very few facts either to the Reserve Bank of India or to the court, upon which it could be said that he has discharged the heavy onus that lay upon him to establish an abandonment of the domicile of origin. It will be remembered that in the decisions mentioned above, the court went into all kinds of evidence. Written documents, including correspondence were looked into and verbal evidence was called for the purpose of discovering the intention of the party concerned. In an application in the writ jurisdiction, such disputed questions of fact can scarcely be determined. Assuming however, that it could be so determined, there is practically no evidence to establish the fact that the petitioner has abandoned his domicile of birth and acquired a foreign domicile of choice.

16. Apart from this, it is a very serious question to be considered namely, as to whether a person has at all a legal right to transmit foreign exchange to a foreign country. It is quite certain that he cannot compel an authorised dealer to do so. The petitioner's Bank might well have refused to render him any such service. The question, therefore, arises as to whether the Reserve Bank of India can be compelled to accord sanction for the transmission of foreign exchange to a foreign country. Is it wholly discretionary or can the Reserve Bank of India be compelled to exercise this discretion under certain circumstances in favour of an applicant, provided he has complied with all the rules and regulations in force and the directions issued by the Reserve Bank of India to authorised dealers? These are serious questions which will have to be considered some day. Wisely however Mr. Roy Chowdhury has not pressed for an answer thereto in this application. He has relied on the fact that the petitioner has failed to discharge the onus of proving that he has abandoned his domicile of origin and acquired a foreign domicile of choice.

17. In my opinion, his arguments must be accepted and it must be held that the petitioner has failed to discharge the onus of proving that he has abandoned his domicile of origin and acquired a domicile of choice namely, a domicile in the U. K.

18. Lastly, Mr. Gupta has asked me to consider the human aspect of the matter. He says that this young man has a wife and children in the U. K. and if he cannot send money there, they will be wholly stranded. Although there is no evidence to show that the circumstances are so precarious as stated by Mr. Gupta, it is most likely that such is the case and Mr. Roy Chowdhury has assured me that if the petitioner makes an application in the proper form as a person of Indian domicile there is no reason why the Reserve Bank of India should not consider the matter with compassion. I must leave it at that.

19. The result is that the application fails and the Rule is discharged. Interim orders, if any, are vacated. There will be no order as to costs.