

(1922) 11 MAD CK 0027
In the Madras High Court

The British India Steam Navigation Co.	APPELLANT
Vs	
H.M. Sharafally Merchant by his Agent H.S. Mahomed Bhoy	RESPONDENT

Date of Decision : 23-11-1922

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 115

Citation : AIR 1923 Mad 435 : (1923) ILR (Mad) 938 : (1923) 17 LW 705 :
(1923) 44 MLJ 100

Hon'ble Judges : Venkatasubba Rao, J; Spencer, J

Bench : Full Bench

Judgement

Spencer, J.—This is a petition u/s 115, C.P.C. to revise the order of two Judges of the Presidency Small Cause Court rejecting as being out

of time an application for retrial of a Small Cause Suit tried by a single Judge of that Court.

2. A preliminary objection is raised that the High Court has no power of revision over an erroneous decision of a Small Cause Court on a question

of limitation, It was held by a single Judge of this Court in Kuppuswami Iyengar v. Narayana Iyengar (1913) 16 M.L.T. 438 that an alleged

erroneous decision of a Small Cause Court on a question of limitation was not liable to be revised u/s 115, C.P.C. and in Letters Patent Appeal

Kuppu-swamy Iyengar v. Narayana Iyengar (1916) 19 M.L.T. 24 this view was upheld. In the present case, however, the result of the two

Judges' decision on the question of limitation has been that if they were wrong in so deciding, there was a failure on their part to exercise a

jurisdiction vested in them and this will be within the scope of Section 115. In Sundaram v. Mause Mavuthar ILR (1922) Mad. 554 F.B., it

appears from the judgments of the learned Chief Justice and Kumaraswami

Sastri, J. that if the erroneous decision of a Subordinate Court involves a refusal to deal with a petition made to it, its action amounts to a failure to exercise a jurisdiction vested in it by law. This distinguishes the present case from cases where no question of jurisdiction is involved by the decision on a point of limitation. The objection, therefore, fails,

3. The judgment in the Small Cause Court which occasioned the application for retrial was pronounced on 10th May 1921. The application u/s 38 of the Presidency Small Cause Courts Act was made on July 15th. That section provides eight days within which to make an application for a new trial or for reversal of the decree or order of a judge who has disposed of a contested suit. The Presidency small Cause Court was closed for the vacation from May 16th to July 16th inclusive. Section 10 of the General Clauses Act provides that if a Court is closed on a day upon which an act is allowed to be done the action shall be considered as done in due time if it is done, on the next day afterwards on which the Court is open. It is clear then that, if the applicant was entitled to exclude the whole vacation of the Small Cause Court, his application made on the 15th of July was in time, but not otherwise. u/s 92 of Act XV of 1882, the Small Cause Court is bound to draw up a list of holidays and vacations and to obtain the approval of the Local Government to it. The notification for the mid-summer vacation of 1921 provides that ""plaints execution applications and other papers will be received only on the days on which the judge sits."" Those are the words of paragraph 5 of the notification. Paragraph 2 deals with the sitting of the Vacation Judge on Wednesdays and Thursdays for the disposal of emergent work. Paragraph 3 deals with cases which require immediate attention for which the party concerned has to give 24 hours of notice to the Registrar. Paragraph 4 deals with the receipt of monies and urgent applications referred to in paragraph 3. It is conceded that the present application was not an urgent application. Urgent applications may include applications, for attachment before judgment, applications for injunctions, stay of execution and such like matters; but the fact that a plaint or petition is about to become time barred will not of itself make the presentation of it an urgent matter, provided that it will be in time, if presented on some later date owing to the exclusion of days when the court is closed. If the present application was capable of being

received on the next day on which the vacation Judge sat after the expiration of 8 days from the date of the order sought to be set aside, then the

court cannot be regarded as closed upon that date when the application might have been made. When a Court is adjourned for the vacation but

the notification states that the Court will be open on certain days for the reception of complaints, petitions and other papers, the Court cannot be

treated as closed on those days when it was open for the above purpose. This is the effect of the Full Bench decision in *Nachiyappa v. Ayyasami*

I.L.R.(1882) Mad. 189, in which four out of five Judges concurred. This principle was followed in another Full Bench of this Court in *Receiver of*

the N. & M. Estates v. Suraparaju (1915) 29 I.C.. 449. In *Parvatheesam v. Bapanna* ILR (1890) Mad. 447, it is implied that a Court cannot be

regarded as closed on dates when arrangements were made and notified for the reception of complaints. The note in *Mr. Rustomji's Law of Limitation*

u/s 4 of the Limitation Act suggests that a different view has prevailed in the Calcutta Bombay and Punjab Courts on the question whether a court

is closed when the office is open for the reception of complaints and petitions. I have referred to the cases in *Rani Venkata Ramnia v. Kherode Mull*

(1998) 10 C.L.J. 120, *Maharajah Raveneswar Prasad Singh v. Baji Nath Ram Goenka* (1909) 10 C.L.J. 120, and *Ranchordas Tribhowandas*

Vs. Pestonji Jehangir, . These cases turn up on the terms of the notification for the closure of the court and the practice prevailing in those courts.

They do not diminish the authority of the Full Bench decision of our Court by which we are bound. As a matter of practice, it is well understood

that complaints which are not presented in the Presidency Small Cause Court on the days when the office is open for receiving them during the

vacation, become time barred after the expiration of the period of limitation appropriate to such suits and the plaintiffs cannot claim to exclude the

whole of the Small Cause Court's vacation.

5. It is however, argued that applications u/s 38 of the Act are applications of a special nature and are not ""complaints, execution applications or other

papers,"" within the meaning of paragraph 5 of the notification, and secondly that the notification is not in conformity with Section 92 of the Act

which requires the list of holidays and vacations to be notified. It is contended that a vacation means a continuous holiday which cannot be whittled

down by an announcement that the Court will be open for the receipt of plaints and other papers. On the first point I am of opinion that the words

others papers"" are very wide and must include applications of this nature, unless there is anything to indicate the contrary. Secondly in the Full

Bench decision in Nachiyappa v. Ayyasami I.L.R.(1882) Mad. 189 it was not considered illegal or irregular that the District Judge should have

appointed certain days for the presentation of plaints and petitions to the ministerial officer in charge during his absence. Order 41, Rule 1 of the

rules of the Small Cause Court (1912) in force in the Presidency Small Cause Court provides for applications u/s 38 being presented to the

Registrar or such other officer as the Chief Judge appoints. There is nothing to show that during the days on which the vacation Judge sat there was

nobody authorised to receive plaints and applications presented on those days. I am therefore not prepared to hold that the notification was illegal

or contravened the provisions of Section 92 of the Act, although I consider that future notifications should be more precisely worded, so as to

leave no doubt as to when applications u/s 38 will be received. The order against which this petition is preferred thus appears to be right and does

not need to be revised by us.

6. The petition is, therefore, dismissed costs.

Venkatasubba Rao, J.

7. The decree of the Small Cause Court is dated the 10th May 1921. On the 16th May, the the Small Cause Court adjourned for the long

vacation. The defendant filed an application for new trial u/s 38 of the Presidency Small Cause Courts Act. Act XV of 1882, on the day when the

Court reopened after the annual recess. The Full Bench of the Court of Small Causes rejected the application as being out of time. u/s 38 the

application for new trial should be presented within 8 days from the date of the decree.

8. It has been argued before us that, as the Court was closed from the 16th May to the 16th July, the application should be held to have been filed

in time as it was filed on the re-opening day.

9. The question turns on the construction of the notification published u/s 92 of the Act, which enacts that the Small Cause Court shall draw up a

list of holidays and vacations to be observed in the Court and shall submit it for

the approval of of the local Government, and that such list when it has received such approval, shall be published in the local official Gazette, The wording of the notification has led to this difficulty and though it must be said that it is somewhat obscure, there can be no reasonable doubt in regard to its interpretation. The notification runs as follows:

Exceptas hereunder mentioned, the Madras Court of Small Causes will be closed for the midsummer vacation from Monday the 16th May 1921

to Saturday the 16th July 1921, both days inclusive.

10. His Honour the third Judge Mr. Zyn-ud-din, Esqwill sit as vacation Judge on Wednesdays and Thursdays for the disposal of emergent work.

11. In any case which requires immediate attention, the party concerned or his vakil may give 2+ hours notice of the same to the Registrar, when

the papers will be sent to the vacation Judge for disposal, after hearing the party, if necessary.

12. The office of the Registrar will be open from Wednesday to Friday in each week from 12 noon to 4 p.m. for the receipt of moneys and of

urgent applications referred to in paragraph 3 supra. \

13. Plaints, execution applications and other papers will, be received only on the days on which the Judge sits.

14. It will be observed that the very first clause, while stating that the Court will be closed for the mid-summer vacation, mentions the qualification,

except as hereunder mentioned", The material clause is Clause 5. It means that the Court will be open on Wednesdays and Thursdays for the

reception of complaints, execution applications and other papers, pleadings or proceedings referred to in Clause 5 are not intended to be disposed of

by the vacation Judge. It is therefore curious that, instead of providing that complaints, etc. will be received only on Wednesdays and Thursdays, the

clause refers to "the days on which the Judge sits." Those days are Wednesdays and Thursdays, as Clause 2 shows; but there was nrefer to them in the manner in which they have been referred to in Clause 5. It has been argued by Mr. Sydney Smith on behalf of the defendant

that Clause 5 must be regarded as referring to "urgent applications" mentioned in Clause4 I do not think that, on a careful reading of this

notification, this contention can be accepted.

15. Clauses 2. 3 and 4 deal with "emergent work" or "urgent applications"

but Clause 5 deals with quite a different subject. This clause is of the first importance and one would naturally expect that the matter contained in it would be clearly expressed and in the forefront of the notification, whereas its actual position and wording are apt to mislead.

16. The fourth clause says that "the office of the Registrar will be open," This implies that it is otherwise closed, but there are no words to indicate that the office of the Registrar will remain closed except as provided for by clause 4. What is really meant is, that the Small Cause Court and the office of the Registrar will be closed during the recess, except as provided for in the notification?

17. Mr. Sydney Smith has next argued that the notification is ultra vires, because the word "vacation" used in Section 92 is different from holidays

and that the Court was not justified in making rules providing for work to be done during the vacation. It is not necessary to deal with this

natter at great length because the point is concluded by authority. In *Nachiappa Mudali v. Ayyasami Ayyar* I.L.R.(1882) Mad. 189 (F.B.) a Full

Bench of, this Court had to consider a similar notification and the publication of such rules was treated as a matter having the sanction of general

usage. In the judgment it was observed that the judicial sittings of the Court may be adjourned but the office of the Court might still remain open for

the presentation of the pleadings. *Parvateesam v. Bappanna* ILR (1890) Mad. 447 also recognises this practice. There the Court was closed for

the annual recess from the 23rd April and the plaint was presented on the 26th April. Arrangement had been made and duly notified for the

reception of plaints on every Monday and Thursday during the recess. The 23rd April happened to be a Monday. It was contended that the suit

was barred and the plaintiff's answer was that the 23rd April was a "local holiday," that he was therefore entitled to present the plaint on Thursday

the 26th. The learned Judges remanded the case for ascertaining whether the 23rd was a "local holiday" and whether the Court was closed on that

day. This of course implies that, if the 23rd was not a "local holiday" the suit would have been barred notwithstanding the fact that the 23rd fell

during the recess. *Nachiappa Mudali v. Ayyasami Aiyar* ILR (1882) Mad. 189 (F.B.) was referred to by a Bench of this Court with approval in

Komuru Appalaswami v. Palli Narayanaswamy (1918) 49 I.C. 626.

18. Even if in any other province a different view had been taken we would be bound by the authority of the decisions mentioned above, but I do

not think that a different rule has been enunciated in any case decided by any other Court; In Ranchordas Tribhowandas Vs. Pestonji Jehangir, the

notification seems to have provided only for ""urgent"" work during the vacation and it was held that the filing of a plaint or the filing of an appeal

could not be considered as work of an urgent nature.

19. Rani Venkataramania v. Kherodae Mull (1898) 10 C.L.J. 118 and Maharaja Rameswar Prasad Singh v. Baij Nath Ram Goenka (1909) 10

C.L.J. 120 afford us no assistance whatsoever because the terms of the notification have not been set out in the reports of the cases.

20. There remains another objection to be dealt with. It has been argued that applications for new trial are not explicitly mentioned in Clause 5. But

the words other papers are comprehensive enough, although a more apt expression might have been used. It is not denied that Clause 5 was

always treated as applicable also to applications for new trial, I am of the opinion that this contention also must fail.