

# CALCUTTA HIGH COURT

Dominion of India

Vs.

R.C.K.C. Nath

Civil Rule No. 802 of 1949

(Harries, C.J. and Banerjee, J.)

05.12.1949

## JUDGMENT

### **Banerjee, J.**

1. This is an application on behalf of the defendant Dominion of India asking for a revision, under Section 115, Civil Procedure Code , of an order made by the learned First Munsiff at Sealdah. By that order, he held that the Sealdah Court had territorial jurisdiction to try the suit.
2. The facts of the case are very simple and may be shortly stated. The plaintiff sued the Governor-General of India in Council for damages for short delivery of goods which, he alleges, he entrusted to the Railway Administration for carriage from Aligarh (U.P.) to Khulna Railway station, which is now within the Dominion of Pakistan.
3. After due notice under Section 80, Civil Procedure Code the plaintiff filed the suit on 7th December 1945, in the Munsiff's Court at Khulna.
4. On 15th August 1947, two Dominions were set up in what previously was British India. One was the Dominion of India and the other the Dominion of Pakistan. There is a Governor General for the Dominion of India and there is a Governor General for the Dominion of Pakistan.
5. After that date, the plaintiff amended his plaint by substituting the two Governor-Generals in place and stead of then defendant the Governor. General of India in Council.
6. On 19th July 1948, the Khulna Court held that it had no jurisdiction to try the suit and returned the plaint for presentation to the proper Court. We are not concerned in this application with the correctness or otherwise of the decision of the Khulna Court. No legal proceeding has been taken to challenge its correctness.

7. On 23rd August 1948, the plaintiff opposite party filed the plaint in the Court of the First Munsif at Sealdah, and amended the cause title of the plaint, by substituting the petitioner the Dominion of India for the Governor-General of India, by striking out the name of the Governor-General of Pakistan and by adding the General Manager, East Indian Railway as defendant 2 and the Chief Commercial Manager, of that Railway as defendant 3.

8. The plaint was further amended by averments made in the body of it to show how and when the cause of action arose. The amendments were allowed after notice to the defendant.

9. The petitioner entered appearance. Various issues were framed. One of them was whether the Sealdah Court had territorial jurisdiction to try the suit. On the prayer of the petitioner, this issue was taken first and decided as a preliminary issue, and the learned Munsif has held that the Court has jurisdiction to try the suit. Against this decision, this application has been made.

10. Defendants 2 and 3 do not reside or carry on business or personally work for gain within the local limits of the jurisdiction of the Sealdah Court. So far as defendant 1, the Dominion of India is concerned, I think, the same principle applies, which was applicable in suits against the Secretary of State for India in Council. That principle, as stated in *Rodricks v. Secy. of State*<sup>1</sup>, is this :

"The Court has no jurisdiction to entertain a suit brought against the Secretary of State for India in Council, where the cause of action has arisen wholly outside the ordinary original jurisdiction of that Court, on the sole ground that the Secretary of State for India in Council dwelt or carried on business or personally worked for gain within the local limits of that Court."

11. Therefore, the Sealdah Court could not assume jurisdiction over this suit on the ground of defendants' residence or their carrying on business or their personally working for gain within the jurisdiction of the Sealdah Court.

12. The question, therefore, is whether the cause of action or any part of it arose within the jurisdiction of the Sealdah Court ?

13. In this case, the cause of action obviously is (1) entrustment of the goods to the Railway Administration and (2) short delivery.

14. If the plaintiff succeeds in proving these two facts, the Railway Administration or for the matter of that defendant 1, who now represents the Railway Administration would be liable unless it can show circumstances which exempt it from liability.

15. It is clear, therefore, that no part of the cause of action arose within the jurisdiction of the Sealdah Court.

16. But the learned Munsif has taken the view that a part of the cause of action arose within that jurisdiction by reason of a certain notification of the East Indian Railway Administration published on 27th May 1948. It is headed "Re : Partition of claims against the late Bengal Assam Railway". It says :

<sup>1</sup>40 Cal 808: (21 IA 1)

"All claims for work done or services rendered to the late Bengal Assam Railway up to 14th August, 1947 and other miscellaneous claims outstanding on that date, should be submitted for registration with the Accounts Department of the East Indian Railway, Calcutta. A separate section to deal with these claims will be formed soon; for the present, public and ex-employees are requested to register their claims as quickly as possible and at the latest within the 1st July 1948, with the Divisional Accounts Officer, East Indian Railway, Sealdah. On receipt of these claims arrangements will be made for their verification with the East Bengal Railway Administration, where necessary, and payments will be made thereafter."

17. It is not necessary to set out the other portions of the notification.

18. Relying upon this notification, the learned Munsif has taken the view that the Railway Administration undertook to make the payment to the plaintiff within the jurisdiction of the Sealdah Court. We are unable to take that view. There is nothing in the notification to show that the Railway Administration undertook so to do. All that the notification says is that persons concerned should put in their claims before the Divisional Accounts Officer, East Indian Railway at Sealdah, which, after verification with the proper authorities, would be paid. But it is not said that it would be payable or paid at the Accounts Officer's office at Sealdah or any other place at Sealdah. Therefore, the opinion of the learned Munsif is clearly wrong.

19. and indeed counsel for the respondent has not sought to support the judgment on that view of the learned Munsif. He has contended that a part of the cause of action arose within the jurisdiction of the Sealdah Court by reason, of the fact that the plaintiff was asked to submit his claim at the Accounts Office at Sealdah.

20. There are two difficulties in the way of the respondent's counsel; first, if the suit be treated as a suit as filed in the Khulna Court the plaint of which was returned and then presented to the Sealdah Court, nothing in the notification can form a part of the cause of action as it was published after the institution of the suit at Khulna. A cause of action must be complete before a suit can be filed. Secondly, if the suit be treated as a new suit filed on 23rd August 1948, no fresh court-fee was paid and there may be the question of limitation. and assuming that we treat it as a

new suit filed in the Sealdah Court on that day, it is clear that the filing of the claim by the plaintiff in the office of the Accounts Officer, Sealdah, cannot be a part of the cause of action. The cause of action, as I have said, is entrustment of the goods and short delivery thereof.

21. The test is this; Suppose the plaintiff does not file the claim before the Officer, or filing the claim he does not allege that in the plaint, can the suit be dismissed ? I think not. It is not incumbent on the plaintiff to file the claim before that Officer. That notification has not the force of a statute or any rule or order having the force of a Statute which compels the plaintiff to file the claim in that office and default of which entails dismissal of the suit.

22. We are therefore of the opinion that no part of the cause of action was furnished by the notification.

23. Consequently, we are unable to hold that any part of the cause of action arose within the local limits of the Sealdah Court.

24. Counsel for the respondent referred us to the case of *Peoples Insurance Co. Ltd. v. Benoy Bhusan*<sup>2</sup>, That was a case for the recovery of certain insurance money. The death of the insured took place at Dacca, where the Insurance Co., had a branch office. It was held that "the cause of action in this case arose within the jurisdiction of the Dacca Court and as the company has a branch office in that place, the suit could be instituted at Dacca, under Explanation 2 to Section 20, Civil Procedure Code "

25. There cannot be any doubt about this proposition. Explanation 2 of Section 20, puts the matter beyond doubt. That section says that a Corporation shall be deemed to carry on business at its sole or principal office in British India or, in respect of any cause of action arising at any place where it has also a subordinate office, at such place.

26. The Insurance Co., had a subordinate office at Dacca and the death of the insured took place at Dacca. Therefore, the suit could be instituted within the jurisdiction of the Dacca Court.

27. In this case, the petitioner, Dominion of India, is not a Corporation and secondly no part of the cause of action arose within the local limits of the Sealdah Court. This case, therefore, is of no assistance to the respondent opposite party.

28. We are, therefore, unable to accept the view taken by the learned Munsif. The order made by him is clearly wrong and it must be set aside.

29. We make the rule absolute with costs.

30. In conclusion, we may add that other points were argued by counsel in this case, viz., (1)

whether the Khulna Court was right in rejecting the plaint, (2) what is the effect of the order of Khulna Court in the light of sub-rule 3 of Rule 4, Indian Independence [Legal Proceedings] Order 1947, whereby in certain circumstances stated in that rule an order made by a Court within Pakistan becomes equivalent to an order made by a competent Court of the Dominion of India and (3) whether the suit is barred by limitation.

31. We have not considered these matters as they are not necessary to be considered in this application. We do not, therefore, express any view on these points.

32. The only question that we have decided is that no part of the cause of action arose within the jurisdiction of the Sealdah Court, and as such, it has no territorial jurisdiction to try the suit.

**Harries, C.J.**

33. I agree.

Rule made absolute.

<sup>247</sup> CWN 292 : (AIR 1943 Cal199)