

SUPREME COURT.

† S.C.
1949

July 4.

PEERBHAI VEERJEE (APPELLANT)

v.

DR. A. K. BHATTACHARJEE (RESPONDENT).*

Institution of Summary Suit under Order 37 of the Code of Civil Procedure in the High Court in 1947—Written statement filed—Subsequent amendment of the Rangoon City Civil Court Act by Burma Act LXXVII of 1947—Jurisdiction raised to Rs. 10,000—Plaint returned from the High Court under Order 7, Rule 10 of the Code.

Held : That where a suit was filed in a Court which had jurisdiction to entertain and try it at the time of institution but which subsequently owing to the passing of a new Act, ceases to have jurisdiction so to do, the appropriate procedure to adopt is to transfer the suit under s. 24, Code of Civil Procedure, to the Court having jurisdiction.

Syed Ally and one v. Cassim Mohamed, (1949) B.L.R. 1949 S.C. 125, followed.

A suit for the recovery of Rs. 7,840 was filed in the High Court under Order 37 of the Code of Civil Procedure. Thereafter owing to the passing of two Acts the jurisdiction of the High Court to try such suit was taken away and the plaint was ordered to be returned by the High Court for presentation to the Rangoon City Civil Court and the plaint was represented to the Rangoon City Civil Court without any objection or complaint from the defendant. Thereafter under s. 15 of the Rangoon City Civil Court Act, an application was presented by the defendant for removal of the case to the High Court and was dismissed. It was contended in the Supreme Court that the Rangoon City Civil Court had no power to try such summary suits.

Held : That under s. 13 the Rangoon City Civil Court has jurisdiction to try all suits, of civil nature, when the amount of the subject-matter does not exceed rupees ten thousand. The Rangoon City Civil Court has jurisdiction to try the suit.

In suits on Negotiable Instruments where the value of the subject-matter does not exceed Rs. 1,000 summary procedure as laid down in Part II of the Rangoon City Civil Court Rules is available to the plaintiff. In suits where the subject-matter exceeds that amount such procedure is not available and the plaintiff has no option but to follow the procedure for suits instituted in the ordinary manner, and Rule 88 will apply to such suits.

Under s. 15 of the Code of Civil Procedure, a suit must be instituted in the Court of lowest jurisdiction. Rules of Procedure laid down in Order 37 of the Code of Civil Procedure are applicable only to suits which can be filed in the High Court and can only be applied after the plaint has been admitted.

* Civil Appeal No. 1 of 1949.

† Present : SIR BA U, Chief Justice of the Union of Burma, MR. JUSTICE KYAW MYINT and U TUN BYU, J.

Order 37 of the Code does not in any way alter the nature of the suit nor the jurisdiction of the Court.

Doulatram Valabdas and another v. Halo Kanya and another, 13 I.C. 244 ; *Wor Lee Lone & Co. v. A. Rahman*, 9 L.B.R. 69, followed.

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C. H. Campagnac for the appellant.

R. Basu for the respondent.

The judgment of the Court was delivered by

MR. JUSTICE KYAW MYINT.—This appeal is by special leave preferred against the order dated the 9th November 1948 passed in the Original Side of the High Court in Civil Miscellaneous case No. 334 of 1948. The circumstances preceding the passing of that order are as follows :—

The respondent in this appeal instituted Civil Regular Suit No. 285 of 1947 in the High Court of Rangoon, under the summary procedure provided by Order 37 of the Code of Civil Procedure, against the appellant for the recovery of Rs. 7,840 alleged to be due on a promissory-note. The appellant applied for, and obtained, leave to defend the suit and filed a written statement. At the time of the institution of the above suit, the pecuniary jurisdiction of the Rangoon City Civil Court was limited to Rs. 5,000. By the Rangoon City Civil Court (Second Amendment) Act (Burma Act LXXXVII of 1947) the jurisdiction of the said Court was extended to Rs. 10,000 and, as a consequence of this extension, the plaint in the respondent's suit in the High Court was returned to the respondent to be presented in the Rangoon City Civil Court. The order of the High Court ordering the return of the said plaint is not before us but we understand that the High Court purported to act under Order 7, Rule 10 of the Code of Civil Procedure.

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We have also been informed by the learned counsel for the appellant that the said order was passed without notice to the appellant.

In *Syed Ally and one v. Cassim Mohamed Surety* (1) this Court has held that, where a suit was filed in a Court which had jurisdiction to entertain and try it but which subsequently, by operation of law, ceases to have jurisdiction so to do, the appropriate procedure to adopt is to transfer the suit under section 24 of the Code of Civil Procedure to the Court having jurisdiction.

The appellant, upon learning that an order returning the plaint to the respondent had been passed, took no steps to have it set aside. Instead, after the suit had been instituted afresh in the Rangoon City Civil Court as Civil Regular 742 of 1948, he applied to the High Court under section 15 of the Rangoon City Civil Court Act to remove the said suit from the Rangoon City Civil Court to the High Court on the ground that the Rangoon City Civil Court had no jurisdiction to entertain a suit instituted under Order 37 of the Civil Procedure Code. The application was dismissed.

In the memorandum of appeal before us also it is contended that the Rangoon City Civil Court has no jurisdiction to try a suit instituted under Order 37 of the Code of Civil Procedure. This contention was however modified at the hearing of the appeal, when the learned counsel for the appellant stated that the said Court has no jurisdiction to try a suit instituted under Order 37 of the Code of Civil Procedure where the value of the subject-matter exceeds Rs. 1,000.

The statement made by the learned counsel is not strictly accurate. The pecuniary jurisdiction of the Rangoon City Civil Court is fixed by section 13 of the

(1) (1949) B.L.R., S.C. 125.

Rangoon City Civil Court Act, which is in the following terms :

“ 13. Subject to the provisions contained in section 14 and to the provisions of the Code of Civil Procedure, the Court shall have jurisdiction to try all suits of a civil nature when the amount or value of the subject-matter does not exceed rupees ten thousand.”

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(Section 14 deals with the Court's jurisdiction as a Court of Small Causes.)

Provision is made for the trial of suits in accordance with summary procedure in Part II of the Rangoon City Civil Court Rules, the first relevant rule being in the following terms :

“ PART II

SUMMARY PROCEDURE IN CERTAIN CASES.

82. This Part shall apply to suits on negotiable instruments when the value of the subject-matter does not exceed rupees one thousand.”

This rule is followed by several other rules laying down the summary procedure to be followed, which is analogous to the summary procedure laid down in Order 37 of the Code of Civil Procedure. The last rule in Part II is in the following terms :

“ 88. Save as provided by this Part the procedure in suits hereunder shall be the same as the procedure in suits instituted in the ordinary manner.”

Upon a consideration of the relevant section of the Rangoon City Civil Court Act and the relevant rules of the Rangoon City Civil Court Rules, we arrive at the following conclusion. The pecuniary jurisdiction of the said Court is limited to Rs. 10,000. In suits on negotiable instruments where the value of the subject-

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matter does not exceed Rs. 1,000, summary procedure as laid down in Part II of the Rangoon City Civil Court Rules is available to the plaintiff. In suits where the value of the subject-matter exceeds that amount, such procedure is not available and the plaintiff has no option but to follow the procedure for suits instituted in the ordinary manner.

There is no lack of authority on the point although none has been cited before us. (In fairness however we must state here that the learned advocate for the respondent was not called upon). In *Doulatram Valabdas and another v. Halo Kanya and another* (1) the plaintiff presented a plaint in the Court of the Assistant Judicial Commissioner of Sind in a suit for the recovery of Rs. 77 due on a promissory-note, claiming that it was a suit under Order 37 of the Code of Civil Procedure and therefore triable only in the said Court. The Court of Small Causes at Karachi had jurisdiction to try all suits on negotiable instruments when the subject-matter of the suit did not exceed Rs. 1,000, but there was no provision for the trial of suits under the summary procedure in that Court. It was held that the suit should have been filed in the Court of Small Causes and the plaint was returned.

The above decision was followed in *Wor Lee Lone & Co. v. A. Rahman* (2) where the plaintiff had presented a plaint in the Original Side of the then Chief Court of Lower Burma in which he claimed Rs. 824 on a promissory-note and stated that he desired to proceed under Order 37 of the Civil Procedure Code. The plaint was returned for presentation to the Court of Small Causes. Upon appeal a Bench of the said Chief Court held that the plaint had been rightly

(1) 13 I.C. 244.

(2) 9 L.B.R. 69.

returned and made the following observations in the judgment :

"Section 15 of the Code (of Civil Procedure) says, 'every suit shall be instituted in the Court of the lowest grade competent to try it,' and section 16 of the Provincial Small Cause Court Act says, 'a suit cognizable by a Court of Small Causes shall not be tried by any other Court having jurisdiction within the local limits of the jurisdiction of the Court of Small Causes.'

The suit was one on a promissory-note for Rs. 824 and was cognizable by the Court of Small Causes and that Court was competent to try the suit. Order 37 lays down certain rules of procedure which are applicable only to the Chief Court, and such rules of procedure can only be applied after the plaint has been admitted. The rules do not in any way alter the nature of the suit, nor the jurisdiction of the Court."

Reverting to the appeal before us, we are informed by the learned counsel for the appellant that, after the institution of the suit in the Rangoon City Civil Court, the plaint was amended and that the amendment was allowed without notice to the appellant. This matter is however irrelevant for the purposes of this appeal.

In any event, what is now before the Rangoon City Civil Court is a suit for Rs. 7,840 alleged to be due on a promissory-note in which the procedure will be the ordinary procedure as distinct from the summary procedure provided under Part II of the Rangoon City Civil Court Rules. It is clear that the appellant has no grievance whatsoever and that the order of the learned Judge of the High Court dismissing the application made under section 15 of the Rangoon City Civil Court Act was correct.

For the reasons given above we dismiss the appeal with costs. Advocate's fee five gold mohurs.

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