

ORIGINAL CIVIL.

*Before Imam J.*1915

May 24.

PADAMSEE NARAINJEE

v.

LAKHAMSEE RAISEE.*

Stay of Suit—Jurisdiction—Civil Procedure Code (Act V of 1908) s. 10
—*Stay of proceedings in one of two suits in respect of same subject-matter in different Courts.*

A. who carried on business at Karachi and employed B. as his commission agent at Calcutta, instituted on 16th February 1915 in the Court of the Judicial Commissioner of Sind at Karachi, a suit against B. for an account and the recovery of whatever sum should be found due on the taking of such account. On 10th March 1915, B. instituted in the High Court at Calcutta the present suit against A. for the recovery of Rs. 26,665 or in the alternative an account. Thereupon, A. applied to have the present suit stayed pending the determination of his suit in the Karachi Court :—

Held, that the only question that required consideration was whether the Karachi Court has jurisdiction to grant the reliefs claimed. The plaint in the Karachi suit sets out allegations that clearly give jurisdiction to that Court to try the case. The present suit must, therefore, be stayed till the determination of the suit at Karachi.

THIS was an application by the defendants to stay proceedings under the following circumstances. Some time in 1912 the plaintiff, who carries on business as a Commission-Agent in Calcutta, agreed to be the commission agent of the defendants, a firm of general merchants at Karachi. Accordingly, the plaintiff acted as the defendant firm's commission-agent in Calcutta for about 18 months, when disputes arose between them regarding the account. On or about the 8th February 1915, the defendant firm received a letter from the plaintiff's solicitors demanding on the

* Original Civil Suit No. 310 of 1915.

plaintiff's behalf the payment of the balance of the account alleged to be due from the defendant firm to the plaintiff. On 13th February 1915, the defendant firm replied denying any indebtedness by them to the plaintiff and stating that they were about to institute proceedings in the Court of the Judicial Commissioner of Sind for the recovery of the money claimed by them to be due to them from the plaintiff. Thereafter, on 16th February 1915, the defendant firm filed a suit against the plaintiff in the Court of the Judicial Commissioner in Sind; and in this suit the defendant firm prayed that the plaintiff (in this suit) might be directed to render a full and proper account of the commission agency business and to pay to the defendant firm whatever should be found to be due to them. On 10th March 1915, the plaintiff filed a suit in the High Court at Calcutta against the defendant firm for the recovery of Rs. 26,665 or in the alternative for an account. Thereupon, the defendant firm submitted the present application in the High Court to have the present suit (being suit No. 310 of 1915) stayed pending the determination of the suit filed by the defendant firm (being Suit No. 84 of 1915) in the Court of the Judicial Commissioner in Sind.

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Mr. K. P. Basu, for the defendants, Lakhamsee Raisee and Jivraj Lakhamsee, submitted that the only question that the Court had to determine was whether the Court at Karachi had jurisdiction to grant the reliefs claimed, and that for the determination of this question it was necessary that the plaint only in that suit should be looked at, and that the statements contained in that plaint should be taken as correct for the purposes of this application. It would be inconvenient if two suits of the same subject between the same parties should be allowed to proceed in two

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different Courts at the same time. He also urged that the case was covered by section 10 of the Code of Civil Procedure (Act V of 1908).

Mr. P. R. Das, for the plaintiff, Padamsee Narainjee. Before proceedings can be stayed under section 10 of the Civil Procedure Code, the defendant must show that (i) the Court has jurisdiction; (ii) the subject-matter of the two suits is the same; and (iii) the parties are identical. The plaint in the Karachi suit clearly shows that the cause of action arose without the jurisdiction of that Court, therefore that Court is not a Court of competent jurisdiction to grant the reliefs claimed. The defendant in that suit, the plaintiff in the present suit, admittedly does not reside in the jurisdiction of the Karachi Court. The institution of proceedings in that Court by the defendant was merely a device to delay the plaintiff from recovering through this Court money due to him by the defendant firm.

Mr. S. R. Das, in reply, referred to section 10 of the Civil Procedure Code and the cases of *Balkishan v. Kishan Lal* (1) and *Meckjee Khetsee v. Kasowjee Deva Chand* (2). He also referred to the notes under section 10 in Woodroffe's Civil Procedure Code; and to Hukam Chand's Treatise on the Law of Res Judicata, pp. 239-241; and more particularly to the passage cited by Hukam Chand on p. 240 to the effect "that a great deal of trouble has arisen from the mistaken conception that jurisdiction depends upon facts, or the actual existence of matters and things, instead of upon the allegations made concerning them."

Civ. adv. vult.

IMAM J. This is an application under section 10 of the Code by the defendants for the stay of this suit

(1) (1888) I. L. R. 11 All. 148, 155. (2) (1879) 4 C. L. R. 282.

on the ground that the matters in issue are also directly and substantially in issue in a suit previously instituted by them at Karachi, the parties in that suit being the parties in this. Both the suits admittedly relate to the same contracts between the parties and the only question that requires to be considered is whether the Karachi Court has jurisdiction to grant the reliefs claimed. In the suit at Karachi the plaint sets out allegations that clearly give jurisdiction to that Court to try the case. Those allegations may be wholly untrue, but it is not for this Court to pronounce on them for the purposes of this application—jurisdiction does not depend upon actual facts but upon the allegations made concerning them. This suit, therefore, cannot be proceeded with. The suit will be stayed till the determination of the suit at Karachi. I make no order as to costs.

Attorneys for the plaintiffs: *R. M. Chatterjee & Co.*
Attorneys for the defendants: *Leslie & Hinds.*

W. M. C.

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