ORIGINAL CIVIL.

Before Lort-Williams J.

RAMPRASAD CHIMANLAL

1930

v.

May 23.

HAZARIMULL LALCHAND.*

Pleadings—Plaint—Cause of action—Jurisdiction—Leave under cl. 12 of the Letters Patent, 1865—Code of Civil Procedure (Act V of 1908), O. VI, r. 2; O. VII, r. 1 (e), (f)—High Court Original Side Rules, Ch. VII, r. 11.

In a plaint, particulars should be given of the facts constituting the cause of action and when it arose and the facts showing that it arose partly or wholly within the jurisdiction; a mere statement that the cause of action arose on a certain date within the jurisdiction of the court is not only insufficient but useless and unnecessary.

Madras Steam Navigation Co., Ld. v. *Shalimar Works, Ld.* (1) explained.

Obiter. The forms of pleading provided in the appendices to the Code are not to be adhered to slavishly.

If the plaintiff relies upon the defendant's residence or place of business as giving jurisdiction, the facts showing this must be stated in the body of the plaint. It is not sufficient to state these in the cause title, unless this is included in the verification. Nor is it sufficient to state merely that the residence is in "Calcutta within the jurisdiction."

Particulars of the grounds upon which an application for leave under clause 12 of the Letters Patent is made must be set out with sufficient clearness in the plaint and the attorney must ask for such leave when he presents the plaint. It is unnecessary to insert a paragraph in the plaint craving such leave.

A list of documents should be annexed to the plaint, not the documents themselves.

It is unnecessary to ask in the plaint for costs, or for further interest, or for general or other relief.

Form of a plaint discussed generally.

In chambers.

On the 17th May, 1930, the following plaint was presented before the Master for filing:—

Liquidated Claim.

Suit No. of 1930.

In the High Court of Judicature at Fort William in Bengal.

Ordinary Original Civil Jurisdiction.

Ramprasad Chimanlal, a firm carrying on business at No. 18, Muktaram Babu Street, in the town of Calcutta.

Plaintiff firm.

v.

Hazarimull Lalchand, a firm carrying on business at No. 31, Mallik Street, in Calcutta aforesaid.

Defendant firm.

The plaintiff firm abovenamed state as follows:—

1st. For several years past the plaintiff firm have had monetary dealings and transactions with the defendant firm in Calcutta within the

* Original Civil, in Chambers, on appeal from the order of the Master.

(1) (1914) I. L. R. 42 Calc. 85.

local limits of the Ordinary Original Civil Jurisdiction of this Honourable Court. Such transactions continued up to the end of the Sambat year 1986 corresponding to the years 1929-30.

2nd. The terms on which the said dealings and transactions were commenced and were continued between the parties as aforesaid were as follows *inter alia* :—

(*a*) That all advances made and to be made by the plaintiff firm to the defendant firm and all payments made and to be made by the plaintiff firm on account of the defendant firm would carry interest at the rate of annas 9 per cent. per mensem compoundable on the Râmnavami day of each Sambat year.

(*b*) That the defendant firm would from time to time make payments to the plaintiff firm in reduction of the former's liabilities.

(*c*) That accounts between the parties would be adjusted annually in Calcutta on the Râmnavami day of each Sambat year and whatever sum would remain due to the plaintiff firm as a result of the said adjustment would be carried over to the books of account of the following year.

(*d*) That the account between the parties would be one continuous and running account and that on the termination of the said dealings and transactions the defendant firm would pay to the plaintiff firm the amount found due as a result of the said dealings and transactions.

3rd. As a result of the dealings and transactions up to the end of the Sambat year 1980 corresponding to the years 1923-24 the sum of Rs. 17,000 became due by the defendant firm to the plaintiff firm. The said sum was in pursuance of the said agreement carried over to the books for the Sambat year 1981 corresponding to the years 1924-25. The said dealings and transactions were thereafter continued from year to year up to the end of the Sambat year 1986 corresponding to the years 1929-30. Particulars of the said dealings and transactions from the Sambat year 1983 to the end of the Sambat year 1986 are set out in annexure " A " hereto.

4th. As a result of the said dealings and transactions there became due and owing by the defendant firm to the plaintiff firm on Chait Sudi 9, 1987, corresponding to 7th April, 1930, the sum of Rs. 36,630-6 which together with interest calculated at the rate aforesaid up to the date of the institution of this suit amounts to Rs. 36,911-15-6. The defendant firm has failed and neglected to pay the said sum or any portion thereof in spite of demands.

5th. The plaintiff's cause of action arose on the 7th April, 1930.

The plaintiff firm claims—

(*a*) Rs. 36,911-15-6 with interest and costs.

Sd. Ramprasad Chimanlal by the pen of Haripersad Ganeriwalla, Partner.

Charu Chandra Bose,
Plaintiff firm's attorney.

I, Haripersad Ganeriwalla, a member of the plaintiff firm abovenamed, do declare and state that the statements contained in all paragraphs of the foregoing plaint are true to my knowledge. I sign this verification at No. 9, Old Post Office Street, in the town of Calcutta, this 17th day of May, 1930.

Sd. Haripersad Ganeriwalla.

Plaint drawn by S. C. Bose, Esq.,
Bar.-at-Law.

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On presentation, the Master returned the plaint, asking the plaintiff firm's attorney to rectify the defects pointed out to him and re-present the plaint. On the 19th May, the same plaint was presented again, without any correction, the attorney declining to rectify the defects as suggested by the Master. On that, the Master rejected the plaint with the following note on it:—

Paragraph 5 is wrong, under Order VII, rule 1 (*e*) and (*f*) of the Code. Facts constituting the cause of action and when it arose and facts showing that the Court has jurisdiction are to be stated. Mere statement that the cause of action arose on a particular date is not what is required. In paragraph 1 it is stated that the plaintiff firm had monetary dealings and transactions with the defendant firm, which may mean anything and is altogether vague and does not comply with Order VI, rule 2 of the Code, which provides that the material facts on which the party pleading relies for his claim or defence are to be stated. It is not pleaded that monies were lent and advanced or that the defendant borrowed the monies. No liability or debt on part of the defendant is pleaded and, therefore, no cause of action is disclosed. On the 17th May instant this plaint was presented and these defects were pointed out to the plaintiff's attorney and the plaint was returned to enable the plaintiff to correct the defects and to represent the plaint. The attorney re-presents the plaint to-day and states that his client declines to rectify the defects and has been advised to prefer an appeal and asks that the reasons for not admitting the plaint may be recorded. For the reasons stated above I hold that no cause of action is disclosed and I reject the plaint.

Sd. N. GHATAK,
Master.
19th May, 1930.

Thereupon, the plaintiff firm appealed to the Judge in chambers.

S. C. Bose for the plaintiff firm.

LORT-WILLIAMS J. This is an appeal from the Master, who has refused to admit a plaint on the ground that it is not in accordance with the rules of pleading laid down in the Code of Civil Precedure and discloses no cause of action. He pointed out the defects to the attorney and asked him to amend the plaint and present it again, so that the necessary alterations could be made before any costs had been incurred by the defendant.

The attorney presented the plaint again, but in its original form unaltered, saying that his client declined to rectify the defects, and had been advised

to prefer an appeal and asked the Master to record his reasons for refusing to admit the plaint. This the Master has done fully upon the back of the plaint.

I am surprised at the attitude adopted by the attorney and the advocate who drew the plaint. The Master gave them an opportunity to put the plaint in order at a time when this could be done without burdening the client with any costs. The client's only interest in the form of the plaint is to see that it is drawn in such a way that it is immune from attack. Instead of availing themselves of this opportunity, so fairly given them by the Master, they have chosen to incur further costs in disputing his decision. I trust that the unfortunate client will not be asked to pay them, and that the prestige of the advocate and the attorney will not be defended at the cost of the client.

I feel sure that neither advocates nor attorneys have any conception of the wide divergence of pleadings in this country from the standard set in England, whence the rules came, and where they have been in constant use and practice for many years. I have no hesitation in saying that courts and practitioners in England would regard as little less than fantastic a large number of the pleadings drawn in this country. They would be the subject of repeated attacks by the opposing solicitor and counsel during interlocutory proceedings, and unless altered drastically by this process, would certainly be rejected by the court. I should have thought that advocates in this country could and would have satisfied themselves of the truth of these observations if they had any doubt about it, by the simple process of comparing their pleadings with the forms given for example in Bullen & Leake. I think that the explanation of this curious disinclination of advocates to try and improve their pleadings must be that the importance of the art of pleading is insufficiently realised in this country. It is at least as important, as any part of the duties of an advocate. Moreover, it demands a high degree of skill, and the final form

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of any pleading should be settled only by advocates who have the necessary skill and experience.

The need for improvement in pleading was emphasised by the Civil Justice Committee in the following words :—

> The main defects are prolixity, argumentativeness, a disclosure of immaterial facts and a suppression of material facts, which result in a failure to disclose the real nature of the case set up * * * *. There is no recognised authority in India from which a practitioner can obtain the assistance in preparing pleadings which an English lawyer enjoys.
>
> The framers of the Civil Procedure Code hoped that the use of the forms inserted in Appendix A would afford sufficient guidance.
>
> The use of these forms is consistently neglected ; but in any circumstances, those who have no other direction will not obtain satisfactory results from their study.
>
> The first requisite is to train pleaders to draft, and this training will be assisted appreciably by the preparation of a work on pleadings in India on the lines of Bullen & Leake.

That was written over five years ago. During the interval, the market has been flooded with legal works on every subject but one, and of every degree of usefulness or the reverse. Many subjects have received so much attention that during that comparatively short period several exhaustive works of prodigious size have been published on the same subject. In fact there can be little doubt that the output of legal works in this country is far ahead of any real and legitimate demand.

Yet, upon the subject of pleading, which far more urgently requires attention than any of the subjects which have been treated, no works have appeared except Mr. P. C. Mogha's Law of Pleadings in British India, which ought to be studied more widely than it is, and a little book by Sir Cecil Walsh and Mr. Weir, which was written before the publication of the Civil Justice Committee's report, and which deals with the principles of pleading and practical hints rather than with precedents. The lamentable inference to be drawn from these facts is that few who had the necessary time considered that they had the necessary knowledge and experience to write a book on pleading.

The rules of pleading generally are contained in Order VI of the Code of Civil Procedure which should

be studied very carefully by every advocate, especially rule 2 of that Order. They are nearly all copies, *verbatim et literatim* of the corresponding rules of the Supreme Court in England.

A number of forms are provided in appendices, which are to be adapted and used where applicable.

The forms in Appendix A must be used with caution. They seem to have been drafted by someone with an imperfect knowledge of pleading, and sometimes are in direct conflict with the Code. For example, where they provide that original documents which are part of the evidence, should be annexed to the plaint.

They are to be taken as the standard of the requisite brevity, and also no doubt as specimens of the character of pleadings required. But they are not to be adhered to slavishly, they are in fact not perfect by any means (Annual Practice. Note to Order XIX, rule 5). Additional forms are provided in the Annual Practice by the learned editors, and forms suitable for almost every kind of case are to be found in Bullen & Leake, the famous text-book on pleadings, and in Odgers on Pleading.

Order VII of the Code provides that certain specific particulars must be given in plaints in this country. Some of these, *e.g.*, rule 1 (*f*), are rendered necessary because the courts in India (unlike the Supreme Court in England) are courts of limited jurisdiction.

Misapprehension about the particulars required by Order VII seems to have arisen owing to an order made by Jenkins C. J. in 1914 which is set out in the notes to Chapter VII, rule 1, of the Rules of this Court on the Original Side.

The order as set out there is undoubtedly misleading, because it purports to require that every plaint must contain a distinct statement (*i*) as to when the cause of action arose, (*ii*) as to where that portion of the cause of action on which reliance is placed as giving jurisdiction arose.

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The result has been that a practice has grown up of including in every plaint a paragraph or paragraphs on the lines following, *viz.*,

> The plaintiff's cause of action arose within the local limits of the Ordinary Original Civil Jurisdiction of this Honourable Court, on (such and such a date) and is not barred by the law of limitation. Inasmuch as the defendant resides outside and it may be contended that a part of the cause of action arose outside the local limits as aforesaid the plaintiff craves leave under clause 12 of the Letters Patent to institute this suit in this Honourable Court.

Such statements are not only wholly insufficient, but useless and unnecessary. Rule 1 (*e*) and (*f*) requires not that a statement should be made that the plaintiff has a good cause of action or that it arose on such and such a date, or that it arose partly or wholly within the jurisdiction, but that particulars should be given of the facts constituting the cause of action and when it arose, and the facts showing that it arose partly or wholly within the jurisdiction and that this was the meaning and intention of the order of Jenkins C. J. is, I think, made clear by his reference therein to Order VII, rule 1 (*e*) and (*f*) and to his observations in *Madras Steam Navigation Co., Ld.* v. *Shalimar Works, Ld.* (1) where he refers explicitly to Order VII, rule 1 (*e*) and quotes it *verbatim*.

However, whether that was the intention of the learned Chief Justice or not, we are concerned only with the Rules, and there can be no mistake about their meaning.

The reason also, is sufficiently obvious. The plaintiff must give such particulars as will enable the defendant and the court to ascertain from the plaint whether in fact and in law the cause of action did arise as alleged or not. The plaintiff's mere statement that it did is useless for this purpose, just as it would be useless to state merely that he had a good cause of action.

Whether these necessary facts appear in their appropriate places in the plaint or in a separate paragraph at the end is a matter for choice. The

(1) (1914) I. L. R. 42 Calc. 85, 100.

forms in the appendix to the Code seem to suggest that their proper place is in such a separate paragraph. But, as I have already said, these forms are not to be followed slavishly and often they are inappropriate for pleadings in the High Court, *e.g.*, paragraph 5 in Form 1 which is repeated in every subsequent form.

In a pleading which is drawn skillfully—they ought to appear in their appropriate places chronologically—and if they do so appear, they should not be repeated in a final paragraph, because unnecessary repetition is one of the worst faults of pleading. Nor is it necessary to insert in the plaint a paragraph craving leave under clause 12—particulars of the grounds upon which the application is made must be set out with sufficient clearness in the plaint, to enable the court or its officer to ascertain whether leave is necessary or not, and the attorney must ask for such leave when he presents his plaint for admission (Chapter VII, rule 11 of the Rules of the Original Side). If leave is necessary, the plaint will, according to the usual practice, be endorsed, with the fiat and placed before the Judge for his signature.

Every practitioner when pleading should have particular regard to Order VI, rule 2. Nearly all pleadings in this country offend against this rule in one way or another. Either they lack conciseness, or they state immatrial facts, and a mistake which is made frequently is to include in the pleading either directly, or indirectly by reference to some document annexed, the evidence by which material facts are to be proved.

Order VII, rule 9, provides that the plaintiff shall endorse on the plaint or annex thereto a list of the documents produced along with it.

Rule 14 (*1*) provides that if a plaintiff sues upon a document in his possession or power he shall produce it when he presents the plaint and deliver the document or a copy thereof to be filed with the plaint.

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Rule 14 (*2*) provides that if a plaintiff relies on other documents as evidence in support of his claim he shall add or annex a list of such documents to the plaint.

Rule 17 provides that copies of entries in shop-books or other accounts shall be filed.

None of these rules require or allow documents which are part of the evidence in the suit, to be annexed to the plaint. The practice seems to have grown up owing to certain forms in the appendix and to Chapter VII, rule 1 of the Rules of the Original Side which refers to (5) List of documents annexed to the plaint, and (6) Exhibits or copies of exhibits annexed. This is misleading because there is no rule which provides for such annexation, on the contrary it is forbidden by Order VI, rules 2 and 9. The lists of documents annexed to the plaint in the present case are not in formal accordance with these rules and are insufficient in particularity. Particulars, which are too voluminous to be included in the plaint, may be annexed thereto or may be delivered separately, and these facts should be stated in the plaint.

The plaint in the present case offends against several of the rules above referred to.

In the first place it states in paragraph 5 that the cause of action arose on the 7th April, 1930, without stating the facts showing that this was so. There is nothing in the facts pleaded to show that any cause of action arose on that date. It is the date merely, upon which the plaintiff finally made up his books of account. Secondly, paragraph 1 is hopelessly indefinite. It alleges monetary dealings and transactions, without describing what they were, or when they took place. Some elucidation of this mystery can be gathered from paragraph 2, where it is suggested, but not stated definitely, that the dealings and transactions (or some and which of them is not stated) were loans or sums paid for and on behalf of the defendants. Paragraph 2 states certain terms of a contract, the particulars of which are

nowhere stated. The said terms *inter alia* provide that payments would be made to the plaintiffs from time to time, that accounts would be adjusted annually in Calcutta and the balance due to the plaintiffs would be carried over to the next year's account, and that, on the termination of the dealings, the defendants would pay the amount found due.

It is nowhere stated that the dealings have terminated, or that the accounts were adjusted at Calcutta or elsewhere.

The facts stated in paragraph 3 do not amount in law to evidence of an account stated. There is no mutuality in the account, which appears from the copy accounts which have been annexed improperly to the plaint, to consist on the one side of a series of loans made by the plaintiff to the defendant, and on the other of a series of repayments of capital and interest. If this is the nature of the cause or causes of action, then limitation would run against each loan separately from the due date thereof. No such dates have been pleaded and it is impossible to discover from the plaint when the cause or causes of action arose, or whether each of them arose wholly or partly within the jurisdiction. If the plaintiffs rely upon the defendant's residence or place of business, as giving jurisdiction, the facts showing this must be stated in the body of the plaint. It is not sufficient to state these in the cause title because the cause title is not covered by the verification of the plaint. *W. R. Fink* v. *Buldeo Dass* (1). This difficulty is caused by the somewhat absurd provision that plaints must be verified, which, with all respect to the draftsmen of the Code, appears to me to be useless, irritating and to add unnecessarily to the costs of litigation. I have never yet been able to discover how, when a litigant has occasion to include in his pleading two wholly inconsistent allegations of fact, which the rules of pleading permit, he manages conscientiously to affirm that both are true and how he evades a consequent

(1) (1899) I. L. R. 26 Calc. 715.

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prosecution for perjury. However, until this anachronism is got rid of, it is advisable to avoid all difficulty and unnecessary repetition by including the cause title in the verification—because the first forms in Appendix A seem to suggest that it is intended that the description and places of residence or business of the parties should appear in the cause title, although Order VII provides that these and even particulars such as the name of the court in which the suit is brought must be contained in the plaint. In this connection, it is necessary to observe that it is not sufficient to say in a plaint that the residence or place of business is in Calcutta, or in Calcutta and within the jurisdiction; the street and number must be given, because there are many streets and parts of streets, which, though within the municipal boundary and commonly referred to as being in Calcutta, are not within the local limits of the Ordinary Original Civil Jurisdiction of this Court. The present plaint is in order in this respect, though such particulars should have been given in the body of the plaint. No particulars of the loans are given in the plaint. If the copies of abstracts from the plaintiff's account books, which are annexed to the plaint, are to be taken as particulars, then they commence with a debt of Rs. 33,600-10-3 owing by the defendant to the plaintiff which has been brought forward from some previous account, of which no particulars are given. The particulars given, therefore, are useless. It may be that in suits such as the present, the plaintiff is unable to give items or details in his pleading, in which case his proper remedy is to ask that an account should be taken, but no such relief has been claimed in this case. Every plaint must state specifically the relief claimed, but it is not necessary to ask for costs, or for further interest, or for general or other relief (Order VII, rule 7).

I see no reason to interfere with the discretion which the Master seems to have exercised properly, and the plaint is returned in order that it may be

amended and presented again for admission and for leave as aforesaid.

I have taken this opportunity to discuss at some length the question of pleading generally, because I realise that there are grounds for the confusion and uncertainty which seem to exist, and because I desire to assist, as far as I can, those, and especially the younger generation of advocates, who desire to acquire the art of pleading. I would point out also that there exists a fruitful source of professional activity, and emolument waiting to be exploited by those advocates who care to equip themselves with the necessary skill, to enable them successfully to attack their opponents' pleadings.

Attorney for plaintiff firm: *C. C. Bose.*

N. G.