ORIGINAL CIVIL.

Before Panckridge J.

KALOORAM AGARWALA

v.

JONISTHALAL CHAKRABARTI.*

1935

July 11, 12, 15.

Jurisdiction—Leave under cl. 12 of the Letters Patent, Revocation of—Letters Patent, 1865, cl. 12.

The promissory note in suit was executed by the defendants at Anara in the district of Manbhum. The defendants also resided there. On the last day before the expiry of the period of limitation, the plaintiff, in Calcutta, took an assignment of the promissory note, for valuable consideration.

Held that leave to file the suit in the Calcutta High Court ought not to be granted.

Where on the facts of a case the Judge, if he had applied his mind to the point, would have refused leave under clause 12, and the omission on the part of the defendants to make an interlocutory application to have the leave revoked has not in any way prejudiced the plaintiff, leave granted may be recalled when the suit comes on for hearing.

ORIGINAL SUIT.

The facts of the case and arguments of counsel appear fully from the judgment.

S. M. Bose, *J. N. Majumdar* and *H. N. Sanyal* for the plaintiff.

B. K. Chaudhuri and *Bibhu K. Chaudhuri* for the defendant Jonisthalal Chakrabarti.

D. N. Sen and *M. L. Bose* for defendant Rajendralal Chakrabarti.

PANCKRIDGE J. This is a suit by the assignee and endorsee of a certain promissory note.

In the plaint it is stated that on June 2, 1931, a sum of Rs. 1,729-13-3 was due and owing from the defendants to one Gajadhar Marwari, and that the

*Original Suit No. 1016 of 1934.

1935

Kalooram Agarwala v. *Jonisthalal Chakrabarti.*

Panckridge J.

defendants agreed to pay interest on that sum at the rate of Re. 1-8 per cent. per mensem. As security for payment of the sum they executed on that date a promissory note in Gajadhar Marwari's favour. On June 1, 1934, Gajadhar Marwari in Calcutta assigned the debt and endorsed the promissory note in favour of the plaintiff for valuable consideration. There is said to be due and owing at the time of suit a sum Rs. 2,673-1-6.

The note in question is signed by the first defendant purporting to sign on his own behalf and on behalf of the second defendant who is his brother.

The suit was instituted on June 1, 1934.

In the plaint the defendants are described as both residing at Anara in the district of Manbhum, and it is common ground that the promissory note was executed at that place.

The defendants have both filed written statements in which they have put forward various defences on the merits. They say that the execution of the promissory note was obtained by fraud, by misrepresentation, and by coercion, and the second defendant also denies the authority of the first defendant to execute the promissory note on his behalf.

Paragraphs 4 and 5 of the first defendant's written statement are as follows:—

Para. 4: This defendant states that this Court has no jurisdiction to try this suit as no part of the cause of action as against him arose within the said jurisdiction.

Para. 5: In the alternative, this defendant states that in any event the assignment is *mala fide* and leave under clause 12, even if it has been granted, should be rescinded.

In the second defendant's written statement the assignment in favour of the plaintiff is described as being fraudulent and collusive, and the second defendant also states that no part of the cause of action as against him arose within the jurisdiction.

At the trial both defendants have raised the point that leave under clause 12 of the Charter should not have been granted and ought to be revoked.

Now, it is well-established that the assignment in favour of the plaintiff must be regarded as part of the plaintiff's cause of action, even although it is a transaction of which the defendants had no notice and with which they had nothing to do. It is, therefore, clear that the Court had jurisdiction to grant leave under clause 12 if the case was in other respects a fit one.

In my opinion, on the facts as set out in the plaint, leave ought not to have been granted. The sum at stake is not a large one, nor *prima facie* is there likely to be raised any issue which the tribunal within whose local jurisdiction the defendants reside is not competent to try satisfactorily. The assignment was admittedly executed on the last day before the expiry of the period of limitation, and one cannot help feeling a suspicion that it was collusive in the sense that it was executed mainly for the purpose of giving this Court jurisdiction which it would not otherwise possess. The defendants are described in the plaint as landholders residing in the district of Manbhum, and, in my opinion, it is no hardship on a person who sees fit voluntarily to take such an assignment as the present to be compelled to institute any proceedings which may be necessary to realise his debt, in the court which would have jurisdiction, apart from the assignment. On the merits, I think that the case is not one in which leave should have been granted.

Various arguments have been advanced by the learned Standing Counsel on behalf of the plaintiff. He points out that under the Civil Procedure Code a suit can be instituted in any court within whose jurisdiction any part of the cause of action arose, and that there is no question of the granting or refusal of leave. This is true, but I do not think that the fact that in a *mofussil* court there is no way of preventing unnecessary hardship in a case like this is a reason for allowing the discretionary jurisdiction of this Court to be used to inflict a similar hardship.

1935

Kalooram Agarwala v. *Jonisthalal Chakrabarti.*

Panckridge J.

Next, it is said that the leave having in fact been granted it must be assumed that the learned Judge granting it has exercised his discretion, and that I cannot or ought not to interfere with such exercise.

With regard to this the difficulty is that my mind refuses to make an assumption which I know is contrary to facts. I believe that the practice of all Judges dealing with interlocutory matters on the Original Side is the same. The Master examines the plaint and if there is an allegation in it showing that part of the cause of action arises within the jurisdiction, the Master endorses the plaint "Leave granted "under clause 12" and submits it to the Judge for his signature. The Judge then signs the plaint as a matter of course and leaves it to the defendant to take such steps as he may be advised. This system may not be wholly satisfactory. But it is not easy to think of a better one, because at that stage whatever is done must in the nature of things be done *ex parte*. I, therefore, feel no difficulty in reviewing (I use the term in its popular sense) the decision, if it can be called a decision of Remfry J. in signing the endorsement of the Master and granting leave.

What seems to me to be a matter of greater importance is the fact that the defendants have taken no steps to have the leave set aside until the hearing of the suit. This is a circumstance which might, I apprehend, in other cases, operate in a manner unfair to the plaintiff, but the circumstances of the present case are such that this question does not arise. As I pointed out, the suit was filed on June 1, 1934, that is to say, on the very day of the assignment and one day before the expiry of the period of limitation. Presumably, the writ would not in the ordinary course be served for at least a week. So no possible question of limitation can arise, because even if the defendants had applied to revoke the leave at the earliest possible moment their application would have been made more than three years from the date of the

1935

Kalooram Agarwala v. *Jonisthalal Chakrabarti.*

Panckridge J.

note. I, of course, express no view as to the effect that the lapse of time between the filing of the suit and the hearing may have.

The defendants justify their delay by citing two decisions. The first is *Secretary of State for India in Council* v. *Golabari Paliram* (1), where Rankin C. J. made certain observations in which he deprecated preliminary applications to take a suit off the file on the ground that leave under clause 12 had been improperly granted. That case, however, can readily be distinguished, because there it was suggested not that the Court had wrongly exercised its discretion in granting leave, but that the Court had no discretion in the case because no part of the cause of action had in fact arisen within the jurisdiction. This contention gave rise to questions of law and fact of some complexity which in the opinion of the Court could not properly have been decided in an interlocutory application. A case which bears a closer resemblance to the one with which I am dealing is *Harnathrai Binjraj* v. *Churamoni Shah* (2). There an application was made to revoke the leave granted, on the ground that the assignment of the debt to the plaintiff was not *bona fide* but made with the intention of creating jurisdiction. The application was dismissed, and in the course of his judgment Ameer Ali J. observed that the question of *bona fides* was a matter which must be gone into in the suit, and that on an interlocutory application he was not in a position to investigate the allegations.

I do not think that either of these cases can be taken as an authority for the proposition that the proper course for the defendant to take in a case where he maintains that the discretion of the Court has been wrongly exercised is to abstain from making any application to remove the suit from the file and wait until the hearing to make his submissions. On the contrary, I think, in many cases, the defendant should bring this aspect of the matter to the notice of

(1) (1931) I. L. R. 59 Cal. 150. (2) (1933) 37 C. W. N. 1139.

1935

Kalooram Agarwala v. *Jonisthalal Chakrabarti.*

Panckridge J.

the Court at the first possible moment, and that his failure to do so, if it in any way prejudices the position of the plaintiff, is a matter which may prevent success of his application. I am speaking of those cases where the Court has admittedly the discretion to grant leave and I say nothing about the other class of cases where the position is that no part of the cause of action in fact arises within the jurisdiction of the Court and the Court has, therefore, no power to grant leave. For reasons which I have already given, I do not think that the omission of the defendants in this case to make an interlocutory application has in any way prejudiced the position of the plaintiff and on the facts I think the case is one in which, if the Judge had applied his mind to the point, he would have refused the leave.

I therefore recall the leave and reject the plaint. I make no order as to the costs of suit.

Leave under clause 12 recalled.

Attorney for plaintiff: *C. C. Bosu.*

Attorneys for defendants: *B. M. Das* and *A. C. Ghosh.*

S. M.