

## APPELLATE CIVIL.

Before Mr. Justice Spencer and Mr. Justice  
Venkatasubba Rao.

1922,  
Nov. 23.

THE BRITISH INDIA STEAM NAVIGATION

COMPANY, LTD. (DEFENDANT), PETITIONER,

v.

SHARAFALLY (PLAINTIFF), RESPONDENT.\*

*Presidency Small Cause Courts (Act XV of 1882), sections 38, and 92—Long vacation—Notification for conduct of urgent work and receipt of papers during long vacation, validity of—Decree passed long before vacation—Application for new trial on reopening of Court after long vacation—Limitation—Revision under section 115, Civil Procedure Code.*

A notification issued under section 92 of the Presidency Small Cause Courts Act stated that during the long vacation of that Court "plaints, execution applications, and other papers will be received only on the days on which the Vacation Judge sits," viz., Wednesdays and Thursdays.

*Held*, that the notification was not *ultra vires* of section 92 of the Act and that an application for a new trial under section 38 of the Act which should be presented within eight days under section 38 came under the words "other papers" in the notification and was barred by limitation when after several weeks it was presented on the day the Court reopened after the long vacation. *Nachiyappa v. Ayyasami*, (1882) I.L.R., 5 Mad., 189 (F.B.), applied.

*Held*, further that where a lower Court declines to exercise jurisdiction by refusing to entertain an appeal on account of a wrong decision on a question of limitation as to when the appeal should have been filed, the High Court has power to revise the order under section 115, Civil Procedure Code. *Sundaram v. Mansa Maruthar*, (1921) I.L.R., 44 Mad., 554 (F.B.), followed. *Kuppasawmi Iyengar v. Narayana Iyengar*, (1916) 19 M.L.T., 24, distinguished.

PETITION under section 115 of Act (V of 1908), praying the High Court to revise the order of the Full Bench of

\* Civil Revision Petition No. 799 of 1921.

Rao Bahadur C. R. TIRUVENGADA ACHARIYAR, Chief Judge, and Doctor K. KRISHNAN PANDALAI, Judge, of the Court of Small Causes, Madras, in Application No. 138 of 1921 in Small Causes Suit No. 13102 of 1920.

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The facts and the notification are given in the Judgment of VENKATASUBBA RAO, J.

*Sidney Smith* for petitioner.—The application was not barred by limitation. Section 92 of the Presidency Small Cause Courts Act prescribes a vacation for the Court which means a continuous number of holidays; hence the notification which cuts the vacation into parts and provides for work being done on certain days during the vacation is *ultra vires* of section 92. Even if the notification is legal and valid it contains only an enabling provision and it prescribes only for the presentation of “urgent applications,” which the vacation Judge could dispose of. Applications for new trial cannot come under the description of “other papers” mentioned in the notification. “Other papers” therein is *ejusdem generis* with urgent applications. Applications for new trial could not be disposed of by a single Judge. The Court is closed during the vacation. Section 10 of the General Clauses Act applies.

*A. Venkatarayaliah* for respondent.—There is no question of jurisdiction involved in the decision of the lower Court. If anything, there is only a wrong decision on a question of limitation; hence no revision lies to the High Court. *Amir Hassan Khan v. Sheo Bahsh Singh*(1), *Kuppuswami Iyengar v. Narayana Iyengar*(2), on appeal from *Kuppuswami Iyengar v. Narayana Iyengar*(3). The application was barred by limitation. The Presidency Small Cause Courts Act is a self-contained Act as regards limitation. Notification under section 92

(1) (1885) I.L.R., 11 Cal., 6 (P.C.).

(2) (1916) 19 M.L.T., 24.

(3) (1914) 13 M.L.T., 438.

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prescribing working days during the vacation is valid. The Court is open on those days. Applications for new trial come under words "other papers." The reasoning in *Nachiyappa v. Ayyasami*(1) applies to this case also.

*Sidney Smith* in reply.—The High Court can revise when the lower Court declines jurisdiction on a wrong construction of law. See *Sundaram v. Manasa Maruthar*(2). In *Nachiyappa v. Ayyasami*(1), it was not held that "appeals" came within the category of "other papers," but it was held that "appeals" came within the description of "petitions."

### JUDGMENT.

SPENCER, J.

SPENCER, J.—This is a petition under section 115, Civil Procedure Code, to revise the order of two Judges of the Presidency Small Cause Court rejecting as being out of time an application for retrial of a small cause suit tried by a single Judge of that Court.

A preliminary objection is raised that the High Court has no power of revision over an erroneous decision of a Small Cause Court on a question of limitation. It was held by a single Judge of this Court in *Kuppuswamy Iyengar v. Narayana Iyengar*(3), that an alleged erroneous decision of a Small Cause Court on a question of limitation was not liable to be revised under section 115, Civil Procedure Code, and in Letters Patent Appeal *Kuppusawmi Iyengar v. Narayana Iyengar*(4), this view was upheld. In the present case, however, the result of the two Judges' decision on the question of limitation has been that if they were wrong in so deciding, there was a failure on their part to exercise a jurisdiction vested in them, and this will be within the scope of section 115.

(1) (1882) I.L.R., 5 Mad., 189 (F.B.).

(2) (1921) I.L.R., 44 Mad., 554 (F.B.).

(3) (1914) 16 M.L.T., 438.

(4) (1916) 19 M.L.T., 24.

In *Sundaram v. Mousa Havuther*(1), it appears from the judgments of the learned Chief Justice and Kumaraswami Sastri, JJ., that if the erroneous decision of a Subordinate Court involves a refusal to deal with a petition made to it, its action amounts to a failure to exercise a jurisdiction vested in it by law. This distinguishes the present case from cases where no question of jurisdiction is involved by the decision on a point of limitation. The objection therefore fails.

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The judgment in the Small Cause Court which occasioned the application for retrial was pronounced on 10th May 1921. The application under section 38 of the Presidency Small Cause Courts Act was made on 15th July. That section provides eight days within which to make an application for a new trial or for reversal of the decree or order of a Judge who has disposed of a contested suit. The Presidency Small Cause Court was closed for the vacation from 16th May to 15th July inclusive. Section 10 of the General Clauses Act provides that if a Court is closed on a day upon which an act is allowed to be done the action shall be considered as done in due time if it is done on the next day afterwards on which the Court is open. It is clear then that, if the applicant was entitled to exclude the whole vacation of the Small Cause Court, his application made on the 15th of July was in time, but not otherwise. Under section 92 of Act XV of 1862, the Small Cause Court is bound to draw up a list of holidays and vacations and to obtain the approval of the Local Government to it. The notification for the midsummer vacation of 1921 provides that

“Plaints, execution applications and other papers will be received only on the days on which the Judge sits.”

(1) (1921) I.L.R., 44 Mad., 554 (F.B.).

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Those are the words of paragraph 5 of the notification. Paragraph 2 deals with the sitting of the vacation Judge on Wednesdays and Thursdays for the disposal of emergent work ; paragraph 3 deals with cases which require immediate attention for which the party concerned has to give 24 hours' notice to the Registrar. Paragraph 4 deals with the receipt of monies and urgent applications referred to in paragraph 3. It is conceded that the present application was not an urgent application. Urgent applications may include applications for attachment before judgment, applications for injunctions, stay of execution and such like matters ; but the fact that a plaint or petition is about to become time-barred will not of itself make the presentation of it an urgent matter, provided that it will be in time, if presented on some later date owing to the exclusion of days when the Court is closed. If the present application was capable of being received on the next day on which the Vacation Judge sat after the expiration of eight days from the date of the order sought to be set aside, then the Court cannot be regarded as closed upon that date when the application might have been made. When a Court is adjourned for the vacation but the notification states that the Court will be open on certain days for the reception of plaints, petitions and other papers, the Court cannot be treated as closed on those days when it was open for the above purpose. This is the effect of the Full Bench decision in *Nachiyappa v. Ayyasami*(1) in which four out of five Judges concurred. This principle was followed in another Full Bench of this Court in *Receiver of the Nidadavole and Medur Estates v. Suraparazu*(2). In *Parvatheesam v. Bapanna*(3) it is implied that a Court cannot be regarded as closed on dates when arrangements

(1) (1882) I.L.R., 5 Mad., 189 (F.B.). (2) (1915) I.L.R., 38 Mad., 235 (F.B.).  
(3) (1890) I.L.R., 13 Mad., 447 at 451.

were made and notified for the reception of plaints. The note in Mr. Rustomji's Law of Limitation under section 4 of the Limitation Act suggests that a different view has prevailed in the Calcutta, Bombay and Punjab Courts on the question whether a Court is closed when the office is open for the reception of plaints and petitions. I have referred to the cases in *Rani Venkata Ramaniam v. Kherodê Mull*(1) and *Maharaja Rameswar Prasad Singh v. Baij Nath Ram Goenka*(2) and *Ranchordas v. Pestonji*(3). These cases turn upon the terms of the notification for the closure of the Court and the practice prevailing in those Courts. They do not diminish the authority of the Full Bench decision of our Court by which we are bound. As a matter of practice, it is well understood that plaints, which are not presented in the Presidency Small Cause Court on the days when the office is open for receiving them during the vacation, become time-barred after the expiration of the period of limitation appropriate to such suits and the plaintiffs cannot claim to exclude the whole of the Small Cause Court's vacation.

It is however argued that applications under section 33 of the Act are applications of a special nature and are not "plaints, execution applications or other papers," within the meaning of paragraph 5 of the notification and secondly that the notification is not in conformity with section 92 of the Act which requires the list of holidays and vacations to be notified. It is contended that a vacation means a continuous holiday which cannot be whittled down by an announcement that the Court will be open for the receipt of plaints and other papers. On the first point I am of opinion that the words "other papers" are very wide and must include applications of this nature, unless there is

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(1) (1909) 10 C.L.J., 118.

(2) (1909) 10 C.L.J., 120.

(3) (1907) 9 Bom. L.R., 1329.

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anything to indicate the contrary. Secondly in the Full Bench decision in *Nachiyappa v. Ayyasami* (1) it was not considered illegal or irregular that the District Judge should have appointed certain days for the presentation of complaints and petitions to the ministerial officer in charge during his absence. Order 41, rule 1, of the rules of the Small Cause Court 1912 in force in the Presidency Small Cause Court provides for applications under section 38 being presented to the Registrar or such other officer as the Chief Judge appoints. There is nothing to show that during the days on which the Vacation Judge sat there was nobody authorized to receive complaints and applications presented on those days. I am therefore not prepared to hold that the notification was illegal or contravened the provisions of section 92 of the Act, although I consider that future notifications should be more precisely worded so as to leave no doubt as to when applications under section 38 will be received. The order against which this petition is preferred thus appears to be right and does not need to be revised by us.

The petition is therefore dismissed with costs.

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VENKATASUBBA RAO, J.—I agree.

The decree of the Small Cause Court is dated the 10th May 1921. On the 16th May, the Small Cause Court adjourned for the long vacation. The defendant filed an application for new trial under section 38 of the Presidency Small Cause Courts Act, Act XV of 1882, on the day when the Court reopened after the annual recess. The Full Bench of the Court of Small Causes rejected the application as being out of time. Under section 38 the application for new trial should be presented within eight days from the date of the decree.

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(1) (1832) I.L.R., 5 Mad., 189 (F.B.).

It has been argued before us that as the Court was closed from the 16th May to the 16th July, the application should be held to have been filed in time as it was filed on the reopening day.

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The question turns on the construction of the notification published under section 92 of the Act, which enacts that the Small Cause Court shall draw up a list of holidays and vacations to be observed in the Court and shall submit it for the approval of the Local Government, and that such list, when it has received such approval, shall be published in the local official gazette. The wording of the notification has led to this difficulty and though it must be said that it is somewhat obscure, there can be no reasonable doubt in regard to its interpretation. The notification runs as follows:—

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“Except as hereunder mentioned, the Madras Court of Small Causes will be closed for the midsummer vacation from Monday the 16th May to Saturday the 16th July 1921, both days inclusive:

2. His Honour the Third Judge, Mir Zyn-ud-din, Esq., Bar.-at-law, will sit as Vacation Judge on Wednesdays and Thursdays for the disposal of emergent work.

3. In any case which requires immediate attention, the party concerned or his vakil may give 24 hours' notice of the same to the Registrar, when the papers will be sent to the Vacation Judge for disposal, after hearing the party, if necessary.

4. The office of the Registrar will be open from Wednesday to Friday in each week from 12 noon to 4 p.m. for the receipt of moneys and of urgent applications referred to in paragraph 3 supra.

5. Plaints, execution applications and other papers will be received only on the days on which the Judge sits.”

It will be observed that the very first clause, while stating that the Court will be closed for the midsummer vacation, mentions the qualification, except as hereunder mentioned. The material clause is clause 5. It means that the Court will be open on Wednesdays



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and Thursdays for the reception of complaints, execution applications and other papers; pleadings or proceedings referred to in clause 5 are not intended to be disposed of by the Vacation Judge. It is therefore curious that, instead of providing that complaints, etc., will be received only on Wednesdays and Thursdays, the clause refers to "the days on which the Judge sits." Those days are Wednesdays and Thursdays, as clause 2 shows; but there was no reason to refer to them in the manner in which they have been referred to in clause 5. It has been argued by Mr. Sidney Smith on behalf of the defendant that clause 5 must be regarded as referring to "urgent applications" mentioned in clause 4. I do not think that on a careful reading of this notification, this contention can be accepted.

Clauses 2, 3 and 4 deal with "emergent work" or "urgent applications" but clause 5 deals with quite a different subject. This clause is of the first importance and one would naturally expect that the matter contained in it would be clearly expressed in the forefront of the notification, whereas its actual position and wording are apt to mislead.

The fourth clause says that "the office of the Registrar will be open." This implies that it is otherwise closed, but there are no words to indicate that the office of the Registrar will remain closed except as provided for by clause 4. What is really meant is that the Small Cause Court and the office of the Registrar will be closed during the recess, except as provided for in the notification.

Mr. Sidney Smith has next argued that the notification is *ultra vires*, because the word "vacation" used in section 92 is different from "holidays" and that the Court was not justified in making rules providing for work to be done during the vacation. It is not necessary

to deal with this matter at great length because the point is concluded by authority. In *Nachiyappa v. Ayyasami*(1), a Full Bench of this Court had to consider a similar notification and the publication of such rules was treated as a matter having the sanction of general usage. In the judgment it was observed that the judicial sittings of the Court may be adjourned but the office of the Court may still remain open for the presentation of the pleadings. *Parvateesam v. Bapanna* (2), also recognizes this practice. There the Court was closed for the annual recess from the 23rd April and the plaint was presented on the 26th April. Arrangements had been made and duly notified for the reception of plaints on every Monday and Thursday during the recess. The 23rd April happened to be a Monday. It was contended that the suit was barred and the plaintiffs' answer was that the 23rd April was a "local holiday" and that he was therefore entitled to present the plaint on Thursday the 26th. The learned Judges remanded the case for ascertaining whether the 23rd was a "local holiday" and whether the Court was closed on that day. This of course implies that, if the 23rd was not a "local holiday," the suit would have been barred notwithstanding the fact that the 23rd fell during the recess. *Nachiyappa v. Ayyasami* (1), was referred to by a Bench of this Court with approval in *Komuru Appalaswami v. Palli Narayanaswamy* (3).

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Even if in any other province a different view had been taken we would be bound by the authority of the decisions mentioned above, but I do not think that a different rule has been enunciated in any case decided by any other Court. In *Ranchordas v. Pestonji*(4), the

(1) (1882) I.L.R., 5 Mad., 189 (F.B.). (2) (1890) I.L.R., 13 Mad., 447.  
(3) (1919), 49 I.C., 626. (4) (1907) 9 Bom. L.R., 1329.

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notification seems to have provided only for "urgent" work during the vacation and it was held that the filing of a plaint or the filing of an appeal could not be considered as work of an urgent nature.

*Rani Venkata Ramaniam v. Kherode Mull(1) and Maharaja Ravaneswar Prasad Singh v. Baij Nath Ram Goenka (2)*, afford us no assistance whatsoever, because the terms of the notification have not been set out in the reports of the cases.

There remains another objection to be dealt with. It has been argued that applications for new trial are not explicitly mentioned in clause 5. But the words "other papers" are comprehensive enough, although a more apt expression might have been used. It is not denied that clause 5 was always treated as applicable also to applications for new trial. I am of the opinion that this contention also must fail.

N.R.

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*Before Sir Walter Salis Schwabe, Kt., K.C., Chief Justice,  
and Mr. Justice Ramesam.*

1923,  
April, 23.

SURJIMULL MURLIDHAR CHANDICK (PLAINTIFF)

APPELLANT,

v.

ANANTA LAL DAMANI AND ANOTHER (DEFENDANT),  
RESPONDENTS.\*

*Stamp Act (II of 1899), sch. I, art. 1—Acknowledgment, meaning of—Statement of account—Dominant intent to supply evidence of debt—Necessity for stamp—Creditor calling for account from debtor—Statement of account by debtor—Credit and debit entries, with a balance item signed*

(1) (1909) 10 C.L.J., 118.

(2) (1909) 10 C.L.J., 120.

\* Original Side Appeal No. 53 of 1922.