

in section 397 of the Indian Penal Code that the sentence passed on the accused person who has been found guilty of attempting to cause death at the time of committing robbery cannot be less than seven years.

Accordingly we accept this application in revision. We sentence the accused Abdul Qayum to seven years' rigorous imprisonment concurrently under sections 392 and 307 of the Indian Penal Code. It was urged that no charge was made under section 397 of the Indian Penal Code, but it is not necessary that that section should appear on the charge sheet, as it is not a substantive offence.

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EMPEROR
v.
ABDUL
QAYUM

REVISIONAL CIVIL

*Before Mr. Justice Niamat-ullah and Mr. Justice
Rachhpal Singh*

PARSHOTAM LAL JAITLEY (DEFENDANT) v. HENLEY'S
TELEGRAPH WORKS (PLAINTIFF)*

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April, 21

Civil Procedure Code, order XXX, rules 1, 6—Suit against a firm—Partner signing vakalatnama on behalf of firm—Written statement filed on behalf of firm—Sufficient to constitute appearance and contest by the partner—Civil Procedure Code, section 115—"Case decided"—Order debarring the partner from taking part in defending the suit.

In a suit brought against a firm a written statement was filed on behalf of the firm by *K*, a partner, and a vakalatnama appointing advocates on behalf of the firm was signed by *J*, another partner. At a later stage of the suit *J* instructed another advocate to file an application on his behalf that *J* had not been impleaded in the suit, which was consequently defective and liable to dismissal. This application was dismissed by the court. The question was then raised whether *J* was entitled to take part in and conduct the defence of the suit, and the court passed an order that as *J* had not put in a written statement and contested the suit he could not now be entitled to take part in

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the defence by cross-examining the plaintiff's witnesses or producing defence witnesses. In revision from this order it was *held*—

Having regard to the provisions of rule 1(2) and rule 6 of order XXX of the Civil Procedure Code, the written statement signed and filed by one partner, *K*, should be considered to be the written statement of the firm, i.e. of all the partners constituting it, and *J* should, therefore, be considered to have contested the suit. Also, *J* had signed the vakalatnama of the advocates who appeared on behalf of the firm; and, at any rate, the authority conferred by him was effective so far as he was concerned, and *J* had, therefore, entered his appearance through counsel. Accordingly, *J* was entitled to take part in and conduct the defence of the suit.

The order debarring *J* from taking part in the conduct of the defence amounted to a "case decided" within the meaning of section 115 of the Civil Procedure Code, and in passing the order the lower court had acted illegally in the exercise of its jurisdiction, therefore a revision lay under section 115.

Dr. N. P. Asthana, for the applicant.

Mr. H. L. Kapoor, for the opposite party.

NIAMAT-ULLAH and RACHHPAL SINGH, JJ. :—This is an application for revision directed against an order passed by the learned Additional Subordinate Judge of Allahabad in a regular suit pending before him. One of the questions arising in the case is whether the order is only an interlocutory order which cannot be questioned in revision, or whether it amounts to a "case decided" within the meaning of section 115 of the Code of Civil Procedure. It is only if the aforesaid order can be considered to amount to a "decision" of a "case" that the merits of the order fall to be considered.

It appears that the plaintiff, W. T. Henley Telegraph Works, Limited, sued for recovery of a certain sum of money and impleaded the Gorakhpur Electric Supply Company, Limited, as defendant No. 1, and "P. L. Jaitly and Company" as defendant No. 2. The suit

was contested by both the defendants, who filed separate written statements. The one filed on behalf of defendant No. 2 was signed by Keshri Narain, who is one of the partners of the firm P. L. Jaitly and Company. It is not quite clear as to who are the members of the firm P. L. Jaitly and Company; but it is no longer in dispute that Keshri Narain and Pandit Parshotam Lal Jaitly are two of the partners. The words "and Company", forming part of the description of defendant No. 2, is a misnomer. It is not a company, registered or otherwise. It is only a firm, of which at least Keshri Narain and P. L. Jaitly are members. It is also necessary to mention that defendant No. 2, that is, P. L. Jaitly and Company, represented defendant No. 1, namely, Gorakhpur Electric Supply Company, Limited, as its Managing Agents. The written statements, filed on behalf of both the sets of the defendants, had, therefore, a common source, namely, P. L. Jaitly and Company. Messrs. Ladli Prasad and Radha Charan, advocates, were retained for defendant No. 1 by Parshotam Lal Jaitly, who signed a vakalatnama in their favour. Messrs. Kampta Prasad Kacker and Vidhya Dhar were retained on behalf of defendant No. 2, and a vakalatnama in their favour was executed by Parshotam Lal Jaitly. The case proceeded to trial for a considerable length of time. On the 10th of January, 1933, Mr. Ramnama Prasad, acting under instructions from Parshotam Lal Jaitly, presented an application that the latter had not been impleaded in the suit, which was consequently defective and liable to dismissal. It was prayed that the suit be dismissed on that ground. The learned Judge dismissed this application for certain reasons, which it is not necessary to mention. That order became final and has not been questioned in revision before us. Immediately after that order was passed, Mr. Ramnama Prasad, again professing to act on behalf of Parshotam Lal Jaitly, presented an application, which referred to the court's recent order of the 10th of January, 1933, and prayed

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“that this court be pleased to decide whether the petitioner can as a proprietor of defendant No. 2 go on with the case or not.” This application was disposed of by an order of the same date, which is in question in revision before us.

The application dated the 11th of January, 1933, asked for the decision of a question which, so far as the proceedings preceding that application show, had never arisen. The order of the court, however, shows that Parshotam Lal Jaitly's misgivings regarding his right to take part in the conduct of the suit were not altogether unfounded. The learned Judge passed an order which negatives that right. The material portion of that order is as follows: “You had a right to put in a written statement or contest, if you desire and at the proper time. If you want now to go on with the suit, you must ask to be allowed to defend or put in a contest and contest the suit, but you cannot be allowed to come in at any moment and say as you also are a member or the proprietor you can be allowed to cross-examine the plaintiff's witnesses or produce evidence on your own behalf without having actually filed any contest or made appearance when you might or ought to have done so. So I cannot allow you now to cross-examine plaintiff's witnesses or to produce evidence on your own behalf.” It seems to us that there was some confusion of thought in the minds of counsel appearing before the lower court on the 11th of January, 1933, and of the lower court itself. The position of a firm is materially different from that of a registered company when it sues or is sued. Order XXX of the Code of Civil Procedure makes it perfectly clear how far a firm, as distinguished from a registered company, can be represented by its individual partners. We confine our remarks to cases in which a firm is sued, and refrain from taking any notice of those provisions of order XXX which relate to cases in which a firm is plaintiff. It will appear from rule 6 that “Where persons are sued as partners in the name of their firm,

they shall appear individually in their own names, but all subsequent proceedings shall, nevertheless, continue in the name of the firm." It is clear that the defendant firm can put in its appearance in the manner provided by rule 6, that is, its individual members should put in appearance but the description of the defendant must continue to be as before, that is, the name of the firm. Where some only of a large number of partners put in appearance, the fact will be duly recorded; and if appearance has not been put in by all the partners, the case will be one in which some only of the partners have appeared and others have not. The suit being one in which the entire firm is sued, the liability of each partner is not several but a collective liability, unless any particular partner is impleaded for some reason in his individual capacity, in which case he should figure as a party wholly apart from his capacity as a partner. Each of the partners who has entered appearance as such has precisely the same rights as regards the conduct of the case as one of several defendants having a common defence. The name of the firm is only a compendious description of the partners in reference to the common interest which they possess in a certain concern. When the firm is arrayed as a defendant, all the partners should be deemed to be in the array of the defendants in their capacity as partners.

Order XXX, rule 1(2) of the Code of Civil Procedure provides that "Where persons sue or are sued as partners in the name of their firm, it shall, in the case of any pleading or other document required by or under this Code to be signed, verified or certified by the plaintiff or the defendant, suffice if such pleading or other document is signed, verified or certified by any one of such persons." In this case the written statement signed by one of the partners, namely Keshri Narain, was filed. It should be considered to be the written statement of the firm, that is, of all the partners constituting it. Parshotam Lal Jaitly should, therefore, be considered to

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have contested the suit. Messrs. Kampta Prasad Kacker and Vidhya Dhar, whose vakalatnama was signed by Parshotam Lal Jaitly, appeared on behalf of defendant No. 2. We do not consider it necessary to decide whether Parshotam Lal Jaitly had the authority to empower the aforesaid advocates to appear for all the partners. At any rate, the authority conferred by him was effective so far as he was concerned. Similarly, Mr. Ramnama Prasad, whose vakalatnama was signed by Parshotam Lal Jaitly, could legally represent him in the proceedings. The court never ordered the proceedings to be *ex parte* against the firm or any member thereof. It is thus clear that Parshotam Lal Jaitly, who is admittedly a member of the firm 'P. L. Jaitly and Company', entered appearance through his authorised counsel up to the date on which the order in question in this revision was passed. We think that the premises on which the learned Subordinate Judge based his conclusion are not well founded. Parshotam Lal Jaitly did contest the suit, and the learned Subordinate Judge's assumption to the contrary is not correct. That he put in appearance as one of the partners of the firm is also undeniable. As a defendant in the case he was as much entitled to cross-examine the plaintiff's witnesses and to produce evidence for defence as any other defendant. It is not necessary, for the purposes of this case, to decide whether the firm as a whole will be bound by what he does in conducting the case. It is, however, unquestionable that, in conducting the case, he is bound by the written statement filed on behalf of the firm, and his conduct of the suit should not travel beyond it.

For the reasons discussed above, we are of opinion that the order passed by the lower court was not in accordance with law.

The next question is whether the order is one which can be interfered with in revision. We are of opinion

that the lower court's decision that the defendant is not entitled to take part in the conduct of the case amounts to a "case decided" within the meaning of section 115 of the Code of Civil Procedure. In depriving Parshotam Lal Jaitly of his right to cross-examine the plaintiff's witnesses and to examine witnesses in defence the lower court acted illegally in the exercise of its jurisdiction.

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The result is that this application is allowed. The order of the lower court is set aside and it is declared that Parshotam Lal Jaitly, as one of the partners of the firm P. L. Jaitly and Company, is entitled to cross-examine the plaintiff's witnesses and to examine such witnesses on his behalf as he may be advised, provided there is no other circumstance in the case which disentitles him to these privileges.

 FULL BENCH

Before Sir Shah Muhammad Sulaiman, Chief Justice, Justice Sir Lal Gopal Mukerji, and Mr. Justice King

RAM ADHAR AND ANOTHER (PLAINTIFFS) v. SUDESRA
 (DEFENDANT)*

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 April, 25

Hindu Law of Inheritance (Amendment) Act (II of 1929), section 2—"Sister" does not include a half-sister.

The word "sister" in section 2 of the Hindu Law of Inheritance (Amendment) Act, 1929, does not include a half-sister, either consanguine or uterine.

Messrs. *Ram Nama Prasad and Kanhaiya Lal*, for the appellants.

Mr. *Shiva Prasad Sinha*, for the respondent.

*Second Appeal No. 1517 of 1931, from a decree of Mathura Prasad, Additional Subordinate Judge of Benares, dated the 31st of August, 1931, confirming a decree of Harish Chandra Sinha, Additional Munsif of Benares, dated the 7th of May, 1931.