

It seems to me that this was merely a matter of the form in which letters were issued. Ram Kishen Das Khanna worked as an accountant in the head office of the company and he must have known very well, as indeed he admits, that he was paid by Messrs. P. L. Jaitly & Co. No payments made to him passed through the books of the company which he himself kept. I hold that he was not an employee of the company and that the decision of the official liquidators to disallow his claim was correct. Messrs. P. L. Jaitly & Co. paid of the amount due under the decree and the official liquidators have applied that Ram Kishen Das Khanna should be directed to refund this sum. For the reasons I have already given I hold that the court has no jurisdiction to pass such an order. As for validating the claim there was no reason why Ram Kishen Das Khanna should have any preference even if any money was due to him. Any priority which he had would be recognized by the liquidators.

1940
 OFFICIAL
 LIQUIDATORS
 GORAKHPUR
 ELECTRIC
 SUPPLY
 Co.
 v,
 SIEMENS
 (INDIA)
 LTD.

The result is that I dismiss the application of Ram Kishen Das Khanna with costs and I also dismiss with costs the four applications of the official liquidators upon the ground that I have no jurisdiction to require the persons concerned to make payments to the official liquidators. The official liquidators may seek such remedy as they can in the ordinary court

Before Mr. Justice Collister and Mr. Justice Bajpai

BABULAL GIRDHARILAL (DEFENDANT) v. KOTUMAL
 (PLAINTIFF)*

1940
 August, 28

Civil Procedure Code, sections 22, 23—Applicable only where each of the courts in question has jurisdiction—Applicant for transfer averring that the court in which the suit has been instituted has no jurisdiction—Application must fail.

Sections 22 and 23 of the Civil Procedure Code postulate that the several courts concerned shall each have jurisdiction. It follows that an application under those sections for transfer of

1940

BABULAL
GIRDHARI-
LAL
v.
KOTUMAL

a suit cannot be made by a defendant who has pleaded want of jurisdiction of the court in which the suit has been instituted.

Mr. *B. S. Shastri*, for the applicant.

Mr. *B. Malik*, for the opposite party.

COLLISTER and BAJPAL, JJ. :—This is an application under section 23(3) of the Civil Procedure Code. The applicants are coal merchants and contractors at Jharia in the province of Bihar. The opposite party manufactures and sells bricks at Benares. The applicants pray that suit No. 346 of 1939, which has been instituted against them by the opposite party in the Munsif's court at Benares, be transferred to the court of the Subordinate Judge of Dhanbad, where suit No. 166 of 1939, instituted by the applicants against the opposite party, is pending. It is said that the two suits arise out of a contract for the supply of coal-dust. It is unnecessary for the purpose of our decision to set out the grounds upon which the transfer is sought.

It is admitted that in suit No. 346 of 1939, pending in the Munsif's court at Benares, the applicants have raised a plea denying the jurisdiction of that court. Section 23 postulates that the several courts concerned shall both have jurisdiction, and it is therefore obvious that in view of the plea of want of jurisdiction which has been taken by the applicants themselves in the court at Benares this application cannot succeed. If authority is required for this proposition, it is to be found in a single Judge decision of this Court, *Purna Chandra Mukerji v. Dhone Kristo Biswas* (1), and in a single Judge decision of the Judicial Commissioner's Court at Sind, *Gangumal Shewaram v. Nanikram Khubchand* (2).

There is also an alternative prayer for stay of proceedings in the court at Benares pending the decision of the suit at Dhanbad. This Court certainly has jurisdiction to grant such a stay order, but we think it is desirable that in the first place an application to this effect should be preferred in the court of the Munsif at Benares.

For the reasons given above we dismiss this application with costs.

(1) (1914) 12 A. L. J. 896.

(2) A.I.R. 1932 Sind, 215.