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DISTRICT
BOARD,
DEHRA
DUN
v.
CAPTAIN
TROTTER

For the reasons given above we allow this application in revision, set aside the decree of the court of small causes and remand the case to that court for the determination of the amount due to the plaintiff in accordance with the observations made above. In view of the fact that the District Board included in its claim tax for a period which was clearly beyond limitation, we direct that the parties shall bear their own costs.

Before Mr. Justice Ganga Nath

1938
December, 19

SRI BHAGWAN (PLAINTIFF) v. SECRETARY OF STATE
FOR INDIA AND ANOTHER (DEFENDANTS)*

Civil Procedure Code, order XXVII, rules 4, 8B—Suit against Government—Agent of Government for receiving process—No Crown pleader appointed by Central Government—Government of India (Adaptation of Indian Laws) Order, 1937, rules 9 and 10—Continuance of former authority—Suit against Government in matters concerning East Indian Railway—Agent, East Indian Railway, Calcutta, is the person on whom the process is to be served.

Held, that in a suit against the Secretary of State for India in Council, arising out of a claim for damages against the East Indian Railway, process for the defendant was rightly served on the Agent, East Indian Railway, Calcutta.

The Central Government not having appointed, as contemplated by order XXVII, rule 8B, of the Civil Procedure Code, any pleader as the Crown pleader for the purposes of that order, there was no Crown pleader who could receive processes against the Crown, under order XXVII, rule 4. In the absence of such a Crown pleader the provisions of rules 9 and 10 of the Government of India (Adaptation of Indian Laws) Order, 1937, will apply and the appointment made by the Governor-in-Council, by Notification No. 1084/VII—180, dated the 26th of August, 1925, under order XXVII, rule 4 as it then stood, of the Agent, East Indian Railway, Calcutta, as the agent of the Government for the purpose of receiving processes issued from the civil courts of the United Provinces against the Secretary of State for India in Council in connection with all cases concerning the East Indian Railway, must be deemed to continue in force.

Mr. *Sat Narain Agarwala*, for the applicant.

Mr. *A. M. Khwaja*, (Junior Standing Counsel), for the opposite parties.

GANGA NATH, J. :—This is an application in revision by the plaintiff against the order of the learned Judge of small cause court, Fatehabad, at Agra, dismissing his suit. The plaintiff brought a suit for damages for wrongful detention of 26 baskets of bangles sent by him from Firozabad to Zamania. The delivery of the goods was not taken by the consignee. After some correspondence between the parties, the defendant railway wrote to the plaintiff on the 8th April, 1936, to take delivery of the goods within 15 days from the receipt of the letter. Within this period the plaintiff sent his man to Zamania on the 21st April, 1936, to take delivery. On reaching there the plaintiff's man found that the goods had been sent by the railway authorities to the Lost Property Office, Howrah. The plaintiff wrote to the Chief Commercial Manager, who asked him to pay the railway freight from Zamania to Howrah and back from Howrah to Zamania and take delivery. The plaintiff refused to do so. He thereafter filed the present suit. The Secretary of State, against whom the suit was filed, was described in the plaint as "Secretary of State for India in Council, through the Agent, E. I. Railway, Calcutta, upon whom the service of summons will be made." The defendant contended, *inter alia*, that the suit had not been properly framed, that it was time barred and that there was no negligence or misconduct on the part of the railway authorities at Zamania in sending the goods to the Lost Property Office, Calcutta. The learned Judge of the small cause court has found that the railway authorities were negligent in sending the goods to the Lost Property Office, Calcutta, before the 23rd April, 1936. As regards the other two pleas, he found in favour of the defendant and dismissed the suit. He framed no less than nine issues, but he disposed of only four. The dismissal of the suit is based on

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the findings that the suit has not been properly framed and that it was time barred. As regards the suit being time barred, he has relied on article 31 of the Limitation Act. Even if this article were applicable, the suit would not be time barred. The goods arrived at Zamania on the 30th December, 1935, which could be the earliest date on which the goods could or ought to have been delivered. The suit was filed on the 24th February, 1937. As required by section 80 of the Civil Procedure Code, a notice was sent to the Secretary of State. The period of two months should be deducted from the period of limitation for the suit, under section 15, clause (2) of the Limitation Act. By deducting this two months' period the suit is within one year from the 30th December, 1935. The suit is, therefore, not time barred.

As regards the frame of the suit there can be no doubt that the suit was filed against the Secretary of State for India in Council as it should have been. What has happened in the suit is that the summons of the suit has been served on the Agent, E. I. Railway, Calcutta. Under order XXVII, rule 4, "the Government Pleader in any court, or such other person as the Local Government may for any court appoint in this behalf, shall be the agent of the Government for the purpose of receiving processes against the Secretary of State for India in Council issued by such court." The Government of India (Adaptation of Indian Laws) Order, 1937, has substituted the following rule for it: "The Crown pleader in any court shall be the agent of the Crown for the purpose of receiving processes against the Crown issued by such court." The Crown pleader has been defined in order XXVII, rule 8B, as follows: "(a) in relation to any suit by or against the Secretary of State or the Central Government or against a public officer in the service of that Government . . . such pleader as that Government may appoint whether generally or specially for the purposes of this order." It has been stated by the learned counsel for the appellant that no

pleader has been appointed by the Central Government as Crown pleader.

In the absence of any Crown pleader appointed by the Central Government the provisions of rules 9 and 10 of the Government of India (Adaptation of Indian Laws) Order, 1937, will apply. Rule 9 lays down: "The provisions of this order which adapt or modify Indian laws so as to alter the manner in which, the authority by which, or the law under or in accordance with which, any powers are exercisable shall not render invalid any notification, order, commitment, attachment, bye-law, rule or regulation duly made or issued, or anything duly done, before the commencement of this order; and any such notification, order, commitment, attachment, bye-law, rule, regulation or thing may be revoked, varied or undone in the like manner, to the like extent and in the like circumstances as if it had been made, issued or done after the commencement of this order by the competent authority and under and in accordance with the provisions then applicable to such a case."

Rule 10 provides: "Save as provided by this order, all powers which under any law in force in British India, or in any part of British India, were immediately before the commencement of Part III of the Government of India Act, 1935, vested in, or exercisable by, any person or authority shall continue to be so vested or exercisable until other provision is made by some legislature or authority empowered to regulate the matter in question."

The Notification No. 1084/VII—180, dated 26th August, 1925, will therefore be deemed to be in force. It is as follows: "Under rule 4 of order XXVII of the Code of Civil Procedure (Act V of 1908) the Governor-in-Council is pleased to appoint the Agent of the East Indian Railway, Calcutta, as the agent of the Government for the purpose of receiving processes issued from the civil courts of the United Provinces of Agra and Oudh against the Secretary of State for India in Council in connection with all the cases concerning the East

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Indian and the Oudh and Rohilkhand railways." Under this notification the Agent of the East Indian Railway, Calcutta, was the proper person on whom notices should have been served, as they have been done both in the case of the suit and of this application in revision. There is, therefore, no defect in the frame of the suit or the service of summons of the suit or notice of this application in revision.

The lower court has not disposed of the remaining issues and the case has to go back to the lower court. It is therefore ordered that the application be allowed with costs, and the case be sent back to the lower court to re-admit it under its original number and to dispose of it in accordance with law.

Before Mr. Justice Bennet and Mr. Justice Verma

RAMANAND MISIR AND ANOTHER (PLAINTIFFS) v.

RAM BARAN CHAUBE (DEFENDANT)*

1938

December, 20

U. P. Agriculturists' Relief Act (Local Act XXVII of 1934), section 30(1)—Reduction of interest—Suit on promissory note executed in lieu of balance due on previous simple mortgage—Only "loan" was that under the simple mortgage—Interest on the simple mortgage can be reduced in the suit on the promissory note.

The money due on a simple mortgage was, on the 25th of March, 1933, paid off in part and a promissory note was executed in lieu of the balance, Rs.500; no fresh advance being made. In a suit on the promissory note the defendant, an agriculturist, pleaded for reduction of interest on the simple mortgage according to the provisions of section 30(1) of the U. P. Agriculturists' Relief Act:

Held, that the only "loan" that was ever advanced being the one for which the simple mortgage was executed, and the promissory note having been executed merely in lieu of the balance due on that mortgage on the 25th of March, 1933, the court was entitled under section 30 of the Act to look behind the promissory note and to take into consideration the real "loan" transaction, namely the simple mortgage, and to apply the provisions of the section to that transaction.