

held that where without making a written application the Court at the request of the parties referred the matter in dispute between them to an arbitration and both parties appeared and conducted their case before the arbitrator, in such a case a written reference was not necessary, and the award could not be set aside on this ground. We are of opinion that the record of the agreement to refer to arbitration in the Court's proceedings and bearing the signature of the parties constitutes sufficient compliance with the requirements of paragraph 1 of the Second Schedule of the Code of Civil Procedure.

As regards the other objection about the reference being vague, the proceedings of the Munsif show that the parties had agreed that the arbitrator should "decide matters in dispute between the parties as set out in the pleadings". We think that this is sufficiently definite as regards the points of difference between the parties. We are therefore of opinion that the objections raised by the applicant have no force and must fail.

The other objections raised in the application, relating to the misconduct of the arbitrator, have rightly not been pressed. The application therefore fails and is dismissed with costs.

Application dismissed.

MISCELLANEOUS CIVIL

*Before Mr. Justice Bisheshwar Nath Srivastava and
Mr. Justice Ziaul Hasan*

ASGHAR HUSAIN (APPLICANT) *v.* HAR PRASAD SAND,
ADVOCATE (OPPOSITE-PARTY)*

1935
August, 22

Oudh Civil Rules, rule 287—Pleader subsequently enrolled as Advocate under Bar Councils Act—Rule 287 of Oudh Civil Rules ceases to apply to him.

A pleader who is subsequently enrolled as an Advocate ceases to be a pleader and rule 287 of the Oudh Civil Rules has no

*Civil Miscellaneous Application No. 428. of 1935, for taking action under section 10 clause (2) of the Bar Councils Act.

1935
JAGMOHAN
v.
SUREAJ
NARAIN

*Srivastava
and Ziaul
Hasan, JJ.*

1935

ASGHAR
HUSAIN
v.
HAR
PRASAD
SAND,
ADVOCATE

application to him. That rule, which is framed by the Chief Court of Oudh in the exercise of its powers under section 6 of the Legal Practitioners Act, can apply only to pleaders and *mukhtars*.

Mr. *H. N. Misra*, for the opposite party.

The Assistant Government Advocate (Mr. *H. K. Ghose*), for the Crown.

SRIVASTAVA and ZIAUL HASAN, JJ.:—A complaint made against the conduct of Pandit Har Prasad Sand was referred to the Bar Council for inquiry under section 10(2) of the Indian Bar Councils Act. The charge framed by the Tribunal appointed under section 11 of the Act was that while an Advocate of the Chief Court he “carried on business as a partner of the firm of Darling & Co., managing agents of the Stock and Share Exchange Company Ltd., without giving notice to the Chief Court”, and was “thereby guilty of professional misconduct within the meaning of section 10, clause (2) of the Indian Bar Councils Act, read with rule 287, sub-rule (IV), Oudh Civil Rules, relating to legal practitioners”. Pandit Har Prasad Sand in his written statement admitted that he was the senior partner of the firm styled as Darling & Co., who were the managing agents of the Stock and Share Exchange Co. He further stated that since the time when Darling & Co. took up managing agency of the Stock and Share Exchange Company he had not taken up any new cases and had appeared only in those cases in which he had been engaged from before. He admitted that it would have been a more desirable course for him to apply to the Chief Court for permission to do his old cases, and expressed his “unqualified regret” for the “technical but *bona fide* error” made by him.

The only objection raised by him before the Tribunal was as regards the application of rule 287, sub-rule (IV) of the Oudh Civil Rules to his case. He urged this in extenuation of his conduct on the ground that no rules

had been framed by the Bar Council preventing Advocates from engaging in trade or business. The Tribunal was of opinion that as Pandit Har Prasad Sand had originally been enrolled as a pleader of the second grade the provisions of rule 287(IV) continued to apply to him even after his enrolment as an Advocate. It held further that Pandit Har Prasad Sand was technically guilty of professional misconduct in carrying on trade without having first notified it to the Chief Court and obtained its orders in the matter.

We regret we are unable to agree with the opinion of the learned members of the Tribunal as regards the application of rule 287(IV) of the Oudh Civil Rules to the present case. No doubt Pandit Har Prasad Sand was enrolled at first as a pleader, second grade, in July, 1923 and subsequently as a pleader, first grade, in July, 1925. Thereafter in September, 1928 he was enrolled as an Advocate under the Indian Bar Councils Act under clause (d) of rule 1 of the rules made under section 9 of the Indian Bar Councils Act. Rule 287 of the Oudh Civil Rules contains rules as regards the qualifications, admission and certificates of pleaders in Oudh made by the Chief Court in the exercise of its powers under section 6 of the Legal Practitioners Act (XVIII of 1879). This section shows that High Courts have been given authority under it to frame rules in regard to pleaders of the subordinate Courts and of the Revenue offices situate within the local limits of its appellate jurisdiction, and, in the case of a High Court not established by Royal Charter, of such Court. It seems therefore perfectly clear that the rules framed under this section can apply only to pleaders and *mukhtars*. Pandit Har Prasad Sand is no longer a pleader, but is an Advocate subject to the provisions of the Bar Councils Act. Obviously therefore rule 287 cannot apply to his case. The learned members of the Tribunal have stressed the words "who, having been admitted as a pleader" used in sub-rule (IV) of rule 287. These words cannot mean that if a

1935

ASGHAR
HUSAIN
v.
HAR
PRASAD
SAND,
ADVOCATE

*Srivastava
and Ziaul
Hasan, JJ.*

1935

ASGHAR
HUSAIN
v.
HAR
PRASAD
SAND,
ADVOCATE

*Srivastava
and Ziaul
Hasan, JJ.*

person has been admitted as a pleader once he must always continue to be subject to those rules even though he might cease to be a pleader. The obvious implication of the rule is that having been admitted as a pleader, the person also continues to be such. As Pandit Har Prasad Sand has now ceased to be a pleader and has been enrolled as an Advocate he is, in our opinion, no longer subject to the rules applicable to pleaders as such, and is subject only to the rules made applicable to Advocates.

The next question is whether Pandit Har Prasad Sand as an Advocate has been guilty of any professional misconduct in engaging in trade as partner of the firm of Darling & Co. Even though no express rule has been framed prohibiting Advocates from engaging in trade or business yet it is worthy of note that rule 2 of the rules framed under section 9 of the Indian Bar Councils Act provides that every person applying to be admitted as an Advocate must file a declaration stating that the applicant does not hold any salaried appointment, nor carries on any trade or business. It is not denied that Pandit Har Prasad Sand filed such a declaration. This clearly implies that he is not to engage in any trade or business while carrying on the profession of an Advocate. We have no doubt that the carrying of a trade or business is ordinarily inconsistent with the practice of the profession of an Advocate. We have therefore no hesitation in holding that the conduct of Pandit Har Prasad Sand in the present case in joining as a partner in the firm of Darling & Co. constituted professional misconduct. But in view of the fact that Pandit Har Prasad Sand has given us an undertaking to suspend his practice and not to do any work as an Advocate while he is engaged in the aforesaid trade or business, we do not think it necessary to impose any penalty on him for the offence. We think that the requirements of the case will be met by our expressing our disapproval of his conduct. As Pandit Har Prasad Sand had admitted his mistake and expressed his unqualified regret in his

written statement, it was hardly necessary for the Government Advocate to put in appearance in the case. Under the circumstances we make no order as to costs.

APPELLATE CIVIL

*Before Sir C. M. King, Knight, Chief Judge and
Mr. Justice H. G. Smith*

THAKUR MAHIPAL SINGH (DEFENDANT-APPELLANT) *v.*
KAMTA PRASAD (PLAINTIFF-RESPONDENT)*

1935
ASGHAR
HUSAIN
v.
HAR
PRASAD
SAND,
ADVOCATE

1935
August, 27

Civil Procedure Code (Act V of 1908), section 73 and Order XXXIV, rule 6—Decrees for sale against same judgment-debtor—Execution of both decrees—Sale in Execution of one decree—Rateable distribution asked for in respect of other decree—Sale, whether to be deemed to be in execution of both decrees—Personal decree under Order XXXIV, rule 6, whether could be obtained in the decree in which rateable distribution was claimed.

Where a person obtains a decree for sale from the Court of the Sub-Judge and another decree from the Court of the Munsif and applies for execution of both of them and then applies to the Court of Sub-Judge for rateable distribution in respect of the other decree and after the sale, both the decrees being only partly satisfied, he applies for personal decrees under Order XXXIV, rule 6 C. P. C. for the balance left in each decree, *held*, that it must be deemed in law that the sale took place in execution of both the decrees and an application under Order XXXIV, rule 6. Even in respect of the decree relating to which rateable distribution was claimed was maintainable. *Shyam Behari v. Mohāndei* (1), *Mahadeo Prasad Pal Singh v. Jai Karan Singh* (2), *Kamta Prasad v. Saiyid Ahmad* (3), and *Deoraji Kuar v. Jadunandan Rai* (4), referred to and distinguished.

Mr. *Ali Zaheer*, for the appellant.

Messrs. *M. H. Kidwai* and *Rishad Shahid Husain*, for the respondent.

*Second Civil Appeal No. 14 of 1934, against the decree of Babu Gauri Shankar Varma, Subordinate Judge of Gonda, dated the 14th of November, 1933, upholding the decree of Pandit Bishun Narain Shukla, Munsif of Gonda, dated the 22nd of March, 1933.

(1) (1930) I.L.R., 6 Luck., 202.
(3) (1909) I.L.R., 31 All., 373.

(2) (1932) I.L.R. 8 Luck., 217.
(4) (1931) A.I.R., All., 92.