PRIVY COUNCIL.

P.C.*
1927

Mar. 29.

SONIRAM JEETMULL, A FIRM
v.
R. D. TATA & Co., LTD.

(On Appeal from the High Court at Rangoon.)

Jurisdiction—Place in which cause of action arises—Duty of debtor to seek creditor—Place of payment impliedly fixed—High Court Charter, cl. 10, Indian Contract Act (IX of 1872), s. 49.

Where there is an obligation to pay money, and, either from the terms of the contract or from the necessities of the case, a further obligation is implied to find the creditor so as to pay him, section 49 of the Indian Contract Act, 1872, as to the place for performance of a promise when no place is fixed, does not apply.

By a contract made in Calcutta the appellants agreed to make good to the respondents defaults in payments to them in respect of sales and purchases of grain in Rangoon, where the respondents had a business branch. By leave of the High Court at Rangoon the respondents sued appellants in that Court or money due under their agreement.

Held, that the appellants were under an implied obligation to pay in Rangoon and that consequently part of the cause of action arose there and there was jurisdiction under cl. 10 of the High Court Charter.

Puttappa Manjaya v. *Virabhadrappa*, (1908) 7 Bom. Law Reporter—*distinguished.*

Dhunjisha Nusserwanji v. *A. B. Fforde*, (1887) I.L.R. 11 Bom. 649, *Motilal* v. *Surajmal*, (1904) I.L.R. 30 Bom. 167, and *Bansilal Abirchand* v. *Ghulam Mahbub Khan*, (1925) L.R. 53 I.A. 58 ; I.L.R. 53 Cal. 89—*referred to.*

Decree of the High Court affirmed.

Appeal (No. 123 of 1926) by special leave from a decree of the High Court in its Appellate Jurisdiction (February 8, 1926) affirming a decree of that Court in its Original Jurisdiction. The appellants were a firm carrying on business in Calcutta. The respondents were a limited Company whose registered office was in Bombay, carrying on business at Calcutta, Bombay, Rangoon, and elsewhere ; in 1919 they had taken over, and had since continued, the business of Tata, Sons & Co.

* PRESENT :—VISCOUNT SUMNER, LORD ATKINSON AND LORD CARSON.

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By a contract made in Calcutta in 1911 the appellants agreed to assist Tata, Sons & Co. in securing constituents to purchase and/or sell grain in Rangoon, on constituents' accounts, as common agents only ; and that they would make good any undisputed claim which Tata, Sons & Co. might lose owing to the failure or suspending payment of constituents ; in consideration Tata, Sons & Co. agreed to pay the appellants one-quarter of the commission they received.

In 1924 the respondents sued the appellants in the High Court at Rangoon to recover under the agreement the amount of two unsatisfied judgments which they had obtained against a Calcutta firm.

The High Court, on an *ex parte* application, granted leave under cl. 10 of the Charter to bring the suit. Under that clause the High Court has jurisdiction where a defendant does not reside or carry on business within the local limits of the jurisdiction, if the cause of action arises wholly, or, with leave of the Court, in part within those limits.

The appellants by their written statement objected that the rule did not give jurisdiction in the suit ; that question was directed to be tried as a preliminary issue.

Chari, J., overruled the objection and his judgment was affirmed on appeal by Rutledge, C.J., and Maung Ba, J.

Dunne, K.C., and *E. B. Raikes* for the appellants. The only part of the cause of action which it can be suggested arose in Rangoon was failure to pay there. The High Court appears to have based its judgment on English rule that a debtor must seek his creditor. That rule however does not apply in India, section 49 of the Indian Contract Act, 1872, having been substituted for it, *Puttappa Manjaya* v. *Virabharappa* (1).

(1) (1908) 7 Bom. Law Reporter 993.

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The steps prescribed by that section were not taken to fix the place of payment. Lord Sumner referred to *Dhunjisha Nusserwanji* v. *B. A. Fjorde* (1), *Motilal* v. *Surajmal* (2).

Those decisions were earlier than those relied on and were each by a single judge; the second is commented on in Pollock and Mulla's Indian Contract Act at p. 301. The recent judgment of the Privy Council in *Bansilal Abirchand* v. *Ghulam Mahbub Khan* (3), did not decide whether the English rule applies in India. Further the respondents' registered office was at Bombay, and having regard to section 72 of the Indian Companies Act, 1913, if there was any implied contract as to the place of payment, it was to pay at Bombay.

Sir George Lowndes, K.C., and *Kenelm Preedy* for the respondents were not called upon.

The Judgment of their Lordships was delivered by—

May 29.

VISCOUNT SUMNER.—This is an appeal by special leave from the High Court of Rangoon, which affirmed a decision of the Court below, overruling an objection to the jurisdiction taken by the appellants. It was imposed upon the parties, as a term of the special leave, that the pleadings between the parties, the judgments and the order of the Court in India should be the sole material for this argument. The appellants were sued in Rangoon by R. D. Tata & Co., Ltd., who have a business branch there, for payment of sums of money, due upon the failure of constituents to satisfy debts due to Messrs. Tata, Sons & Co. which sums the defendants had undertaken to make good to them. Judgment had been obtained, and there was no dispute about the amount or validity of these debts or about

(1) (1887) I.L.R. 11 Bom. 649.
(2) (1904) I.L.R. 30 Bom. 167.
(3) (1925) I.L.R. 53 Cal. 89; L.R. 53 I.A. 58.

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their being due from the original debtors, but Messrs. Jeetmull, who carry on business in Calcutta, contend that they cannot be sued for this money in Rangoon. The transactions between these parties were a continuation of dealings which had existed for a number of years before the present plaintiffs became an incorporated company and had been carried on under a memorandum dated the 10th December, 1911, and signed in Calcutta. It is clause 2 of that contract that expresses Messrs. Jeetmull's obligation to pay in the present case, and it says that Messrs. Jeetmull are to make good any undisputed claims that Messrs. Tata & Co. might lose owing to the failure or suspension of payment of constituents. Accordingly, one point only arises, namely, whether the part of this contract relating to payment was performable by Messrs. Jeetmull in Rangoon. If it was, there was jurisdiction in the Court to entertain the suit and the objection of the appellants was rightly overruled.

The point, at first sight appears to be exceedingly short. It is quite true the contract does not say where Messrs. Jeetmull are to pay, but it does say, by an implication which is indisputable, that they are to pay Messrs. Tata, Sons, Co. and it follows that they must pay where that firm is. Hence one would think that, upon the face of his contract, not indeed in express terms, but by the clearest implication, payment is to be made in Rangoon. In respect of the whole of this business it is not disputed that the business transactions, out of which the outstanding debts arose, took place in Rangoon, and for this purpose the branch of Messrs. Tata, Sons & Co. there were the Messrs. Tata, Sons & Co. concerned. It was objected, however, in the High Court of Rangoon, that this constituted an importation of a technical rule of the English Common Law

into the jurisprudence of India, namely, the rule that the debtor must seek out the creditor. The simple answer to that would have been that, on the contrary, it was a mere implication of the meaning of the parties. The appellants, however, rely upon section 49 of the Indian Contract Act, which is in these terms :—

"When a promise is to be performed without application by the promisee and no place is fixed for the performance of it, it is the duty of the promisor to apply to the promisee to appoint a reasonable place for the performance of the promise and to perform it at such place."

Then it is said that no place was fixed by the contract or prior to the institution of this suit for the performance of the obligation of payment, and no application has been made by the promisor to the promisee to appoint a reasonable place and therefore there is no place of payment. Consequently, this section, which, it is said, replaces any rule of law with regard to the obligation of the debtor to seek out the creditor, has not been satisfied, and so there is no part of the contract, which is performable in Rangoon. The submission seems a strange one. It is quite certain that, if the application had been made, the place appointed would have been Rangoon and all would then have been well for the plaintiff. Also it is plain that the section makes it the duty of the promisor to apply for the appointment of a reasonable place, a duty which in this case the promisor has entirely disregarded. It is not easy to reconcile with the ordinary rules of law a construction which enables the promisor to better his position under his contract by neglecting to perform a statutory duty imposed upon him with regard to its performance. The matter, however, is said to be covered by authority in India, and it therefore becomes necessary to

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consider what the authorities are. They do not appear to bear out the view which has been presented to their Lordships. In 1904, in the case of *Motilal* v. *Surajmal* (1), Tyabji, J., held that "where no specific contract exists as to the place where the payment of the debt is to be made, it is clear, it is the duty of the debtor to make the payment where the creditor is." This follows the principle of *Dhunjisha Nusserwanji* v. *A. B. Fforde* in 1887 (2), where it was held that, "In the absence of stipulation in the contract itself, the intention of the parties to it was to guide the Court in determining the place of its performance," and upon that principle the suit, which was one relating to leave under clause 12 of the Letters Patent, was decided against the jurisdiction of the Bombay Court. Then shortly after the former of the above cases, in the case of *Puttappa Manjaya* v. *Virabhadrappa* (3), the High Court of Bombay had the matter before it on appeal. No authority whatever appears to have been cited, but there being an objection that the Court had no jurisdiction to entertain a creditor's suit for recovery of payment from the debtor, Sir Lawrence Jenkins says:—

"This argument rests upon the assumption that the Common Law rule applies that a debtor must seek out his creditor. We think, however, in India the rule as to the place of performance, whether it be payment or any other mode of performanee, is to be determined by section 49 of the Contract Act; and applying that section to the facts of this case, we think, it is impossible to hold that the payment was to be made within the limits of the jurisdiction of the Sirsi Court, for no such application has been made or place fixed as section 49 prescribes. Therefore we are of opinion that the Sirsi Court had no jurisdiction."

What the contract precisely was does not appear, but the suit was to recover any balance that might

(1) (1904) I.L.R. 30 Bom. 167. (2) (1887) I.L.R. 11 Bom. 649.
(3) (1905) 7 Bom. L. Reporter 993.

be found due on taking accounts with interest, and the facts of that case differ from the facts of such a case as the present. Finally, this Board had the matter before it in 1925, in *Bansilal Abirchand* v. *Ghulam Mahbub Khan* (1), and there, the English rule having been urged in terms upon their Lordships on the one side, and *Puttappa's* case on the other, Lord Blanesburgh for the Board says :—

"There is no promise either by the principal debtor or the surety to make any payment at Secunderabad, and, so far as the principal debtor is concerned, the bond above abstracted is the only promise on his part which is forthcoming. It is quite true that, on failure of any instalment, there is doubtless an implied promise by him to repay the loan. But there is no implied promise to repay it at Secunderabad. Even by British law the duty of a debtor to find and pay his creditor is only imposed upon him when the creditor is within the realm. And the plaintiff has not contended that if there be any such duty at all imposed by Indian law upon a debtor, it extends in this respect further than in England. Accordingly, so far as the principal debtor is concerned, there is no obligation upon him either express or implied to make any payment to the plaintiff at Secunderabad."

Their Lordships do not think that in this state of the authorities it is possible to accede to the present contention that section 49 of the Indian Contract Act gets rid of inferences, that should justly be drawn from the terms of the contract itself or from the necessities of the case, involving in the obligation to pay the creditor the further obligation of finding the creditor so as to pay him. The rule in section 49 is one which it was intended should apply both to the delivery of goods and to the payment of money, to which obviously different considerations apply from those applying in a case like the present, where the question is one of jurisdiction, and their Lordships are satisfied that an intention

(1) (1925) L.R. 53 ; I.A. 58 I.L.R. 53 Cal. 89.

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is shown in the contract that payment should be made in Rangoon. Accordingly part of the contract was performable in Rangoon so as to satisfy section 49 of the Indian Contract Act, and there was jurisdiction to entertain the suit.

Their Lordships will humbly advise His Majesty accordingly that this appeal should be dismissed with costs.

Solicitors for Appellants—*Bramall and Bramall.*

Solicitors for Respondents—*Stoneham & Sons.*

ORIGINAL CIVIL.

Before Mr. Justice Chari.

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Mar. 29.

R.M.V.V.M. CHETTYAR FIRM

v.

M. SUBRAMANIAM AND ANOTHER.*

City of Rangoon Municipal Act (Burma Act VI of 1922), ss. 80, 81, 194—Burma Land and Revenue Act (II of 1876), ss. 43 to 48—Recovery of arrears of taxes "as if they were arrears of land revenue," meaning of—Application of ss. 46 to 48 of the Burma Land and Revenue Act to sales by Municipal officer for recovery of "property-taxes"—Title of purchaser at such sales whether free from all incumbrances—Effect of collusive fraud.

Held, that section 194 of the City of Rangoon Municipal Act empowers the Corporation to recover the arrears of its taxes and other dues "as if they were arrears of land revenue," but that does not mean that sections 46 to 48 of the Burma Land and Revenue Act apply to *all* Municipal sales, so as to confer on the auction-purchaser in every case a title free from incumbrances. These sections can only apply where the dues to the Municipality are in the nature of land revenue or land rate in lieu of Capitation-tax. So far as "property-taxes" as defined in section 80 of the City of Rangoon Municipal Act are concerned, it is open to the properly authorized officer of the Municipality to direct the recovery of arrears in the manner prescribed by sections 46, 47 of the Burma Land and Revenue Act and to a sale held under these sections, the provisions of section 48 of the Act will apply, unless the purchaser acted in collusion with the owner to defraud the incumbrancer.

Chinnasami Mudalay v. *Thirumalai Pillai*, 25 Mad. 572; *Ibrahim Khan* v. *Rangasamy*, 28 Mad. 428; *Kadir Mohideen* v. *Muthukrishna Iyer*, 26 Mad

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* Civil Regular Suit No. 606 of 1926.