

Before Mr. Justice Candy and Mr. Justice Tyabji.

*IN RE NARAYEN SADASHIV KALE.**

1890.

March 1.

Regulation II of 1827, Sec. 51—Pleader and client—Pleader's absence from Court owing to his temporary appointment as a Subordinate Judge—“necessary cause.”

“On the day fixed for the hearing of a suit, neither the plaintiff nor his pleader present; the defendant not having been served was also absent. Plaintiff’s pleader, however, sent intimation to the Court in writing that he had been appointed to act as a Subordinate Judge, and as he was going that day to join his appointment, he was unable to attend the Court. He, therefore, requested that the case should be adjourned till his return, or that a notice be issued to his client to enable him to make the necessary arrangements for the conduct of his case.

• *Held*, that the pleader, having been temporarily appointed to act as a Subordinate Judge, was unable to attend the Court in consequence of a “necessary cause” within the meaning of section 51 of Regulation II of 1827; and as he had sent the necessary notification in writing to the Court, the suit should not be dismissed, but adjourned for a reasonable time.

REFERENCE by Ráo Bahádur Gangadhar Vishnu Limaye, First Class Subordinate Judge of Belgaum, under section 617 of the Civil Procedure Code (Act XIV of 1882).

The reference was as follows:—

“The plaintiff sued for rent of a house. When it came on for hearing, the plaintiff and his pleader were called, but both were absent. The defendants not being served were also absent. A report of the pleader was later submitted to the Court, stating that being appointed to act as Subordinate Judge, he was going away that day to join his appointment, and requesting that all his cases should either be adjourned till his return, or, if this could not be conveniently done, a notice should be issued in each case to the party concerned to enable him to make the necessary arrangements for the conduct of his case.”

The questions referred for the High Court’s opinion were:—

1. Whether the procedure laid down in section 54, clause 1, of Regulation II of 1827, should be followed in such a case, or whether the suit should be dismissed for default?

* Civil Reference, No. 2 of 1899.

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2. Whether, if the said section be applicable to the^d
is necessary to issue a notice to the party concerned? f

His opinion on the second question was in the negative.

Section 54 of Regulation II of 1827 provides as follows:—

“If a pleader is unable to attend the Court in consequence of indispe-
or other necessary cause, he shall notify the same to the Court in writi.
which case proceedings in the suit shall be stayed for such time as the C
deems reasonable, to enable the party to transfer by endorsement or other
his power-of-attorney (either temporarily or until the suit is determin^d
another pleader.”

The reference was argued before a Division Bench (C
and Tyabji, JJ.).

Sadashiv R. Bakhle, as *amicus curie*, for plaintiff.

Dattatrya A. Idgunji, as *amicus curie*, for defendants.

CANDY, J:—We think that the pleader, who was temporary,
appointed to be a Subordinate Judge, was unable to attend th
Court in consequence of a “necessary cause.” Section 54 of
Regulation II of 1827 was, therefore, applicable, and in accord
ance with the provisions of that section the pleader sent the
necessary notification in writing to the Court. He could, under
the circumstances, have appointed another pleader in his behalf
under Civil Circular 18 (c), but according to the practice, which
is apparently at present prevailing in the Sub-Court, a pleader
who is unable to attend the Court, owing to his temporary ap-
pointment as a Subordinate Judge of another Court, is not bound
to appoint another pleader to conduct his cases in the Court in
which he was practising. As it is also the present practice for
the Court to issue notices to the parties in cases falling under
section 54 of Regulation II of 1827, we think that there were
in the case, now referred by the Subordinate Judge, seasons,
which he could have recorded under section 98 of the Civil Pro-
cedure Code, for not dismissing the suit.

Order accordingly.