

to be taxed on the Original Side scale, it will be advisable to consider whether a Rule should be framed under the Bombay Pleaders' Act, XVII of 1920.

Answers accordingly.

R. R.

1921.

TATA
INDUSTRIAL
BANK,
LIMITED,
In re.

ORIGINAL CIVIL.

Before Sir Norman Macleod, Kt., Chief Justice.

HANIF MAULABAKSH (PLAINTIFF) *v.* KULSAM AND ANOTHER (DEFENDANTS)³.

1921.

October 8.

Civil Procedure Code (Act V of 1908), Order XXV, Rule 1—Security for costs—Plaintiff residing out of British India and not possessing immovable property within British India—Temporary residence in British India for the purpose of Court proceedings, whether sufficient to dispense with security.

The plaintiff who was a resident of Fatepur Sikur outside British India arrived in Bombay in January 1921 for the purpose of filing a criminal complaint against A for enticing away his wife, K. The magistrate having expressed an opinion in the course of the criminal proceedings that the plaintiff should obtain a declaration of the Civil Court as regards his marriage with K, the plaintiff who had all along remained in Bombay filed a suit in July 1921 against A and K for such a declaration.

Held, on a summons taken out by the defendants, that the plaintiff was bound to give security for their costs under Order XXV, Rule 1, inasmuch as he had been staying in Bombay only for the purpose of taking proceedings to get his wife back, and that did not constitute such residence as would enable him to escape the application of the rule.

CHAMBER Summons for security for costs under Order XXV, Rule 1, of the Civil Procedure Code.

The plaintiff, Hanif, and the defendants, Kulsam and Alladin, were Sunni Mahomedans of Fatepur Sikur, a Native State.

³O. C. J. Suit No. 3083 of 1921.

1921.

HANIF
MAULA-
BAKSH
v.
KULSAM.

The plaintiff was married to the first defendant Kulsam at Fatepur Sikur in June 1911. Since her marriage, up to 1918 when she attained puberty the first defendant had lived with her parents. Thereafter, she lived with the plaintiff.

The plaintiff alleged that in January 1920 the second defendant enticed the first defendant away and brought her to Bombay where he subsequently married her. In January 1921 the plaintiff came to Bombay for the purpose of filing a criminal complaint against the second defendant.

In the proceedings before the trying magistrate the second defendant produced a decree of the Court of Sikur State purporting to dissolve the marriage between the plaintiff and the first defendant. The plaintiff denied all knowledge of this decree and said it was obtained by fraud.

The magistrate expressed an opinion that in the circumstances the plaintiff, the complainant, should obtain a declaration of the civil Court as regards his marriage with the first defendant. The plaintiff thereupon asked for time and the criminal proceedings were adjourned.

On 26th July 1921 the plaintiff filed the present suit for a declaration that the first defendant was his lawful wife, the marriage between the first and the second defendants being illegal and void. He accordingly prayed (i) that the first defendant might be ordered to reside with the plaintiff and to render conjugal rights to him, (ii) that the second defendant might be ordered to pay to the plaintiff Rs. 10,000 as compensation for his wrongful act in enticing away the first defendant and committing adultery with her.

Ever since the filing of the criminal complaint the plaintiff had remained in Bombay maintaining himself by his labour as a mason.

In October 1921, the defendants took out a chamber summons against the plaintiff calling upon him to show cause why he should not give security for the costs of the defendants under Order XXV, Rule 1, the plaintiff having no immoveable property in British India.

Jinnah, for the plaintiff.

Vellani, for the defendants.

MACLEOD, C. J. :—The parties to this suit are Sunni Mahomedans of Fatepur Sikur outside British India. The plaintiff married the first defendant in 1911 and alleges that after she attained puberty in 1918 she lived with him as his wife and thereafter the second defendant enticed away the first defendant and brought her to Bombay. The plaintiff on his arrival in Bombay in January 1921 filed a complaint against the second defendant in the Court of the Presidency Magistrate. The proceedings went on for some months in the Presidency Magistrate's Court until the Magistrate expressed the opinion that the plaintiff ought to file a suit in a civil Court to obtain a declaration as regards his marriage with the first defendant, as the accused before him produced a decree which set aside the plaintiff's marriage. Accordingly the plaintiff filed this suit on the 26th July 1921; and the defendants have taken out this summons calling upon him to show cause why he should not give security for the defendant's costs under Order XXV, Rule 1, Civil Procedure Code, on the ground that the plaintiff was residing outside British India and did not possess any immoveable property within British India.

Now, it is quite obvious that if the suit had been filed in January this rule would have applied and the plaintiff would have rendered himself liable to an

1921.

HANIF
MAULA-
BAKSH
v.
KULSAM.

1921.

HANIF
MAULA-
BAKSH
v.
KULSAM.

order under the rule. But he now contends that the rule should not be applied as owing to the Police Court proceedings he has been living in Bombay for the last nine months and supporting himself by his labour. Therefore, he is a resident of Bombay. That, no doubt, is an ingenious and plausible argument, but the fact remains that the plaintiff is really a resident of a State outside British India. He has been staying in Bombay only for the purpose of taking proceedings to get his wife back. That does not constitute such residence as will enable him to escape the application of the rule.

Summons absolute. The plaintiff to give security to the extent of Rs. 1,000 for the defendants' costs within a month.

Costs costs in the cause.

Counsel certified.

Solicitors for plaintiff: Messrs. *Thakordas & Co.*

Solicitors for defendants: Messrs. *Mansukhlal Hiratal & Mehta.*

Summons made absolute.

G. G. N.

CRIMINAL REVISION.

Before Sir Norman Macleod, Kt., Chief Justice, and Mr. Justice Shah.

1921.

EMPEROR v. BALKRISHNA & GOVIND KULKARNI^o.

September
28.

High Court—Jurisdiction—Contempt—Contempt of a Court in the Mofussil—Comments on pending proceedings—Allegations against the trying Magistrate.

During the pendency of a trial before the First Class Magistrate at Dhatwar, the opponent, who edited a newspaper published at Dharwar,

^o Criminal Application for Revision No. 211 of 1921.