

1921

 BABAN
 HENRAJ
 v.
 THE CITY
 MUNICIPALITY,
 POONA.

MACLEOD, C. J.:—Disputes between the plaintiff and the defendant Municipality arose under a contract between the parties. The Municipality had entered into that contract under the powers granted to it under section 40 of the Bombay District Municipal Act. The Municipality claimed according to the terms of that contract to deduct a certain amount from the plaintiff's deposit for non-performance of his contract. As the Municipality obtained their powers to enter into this contract from the Act, it follows that their powers to enforce the contract, according to the construction they put upon it, must also be in pursuance of the Act. Therefore, any suit which the plaintiff might wish to bring under the contract would come within the provisions of section 167 of the Bombay District Municipal Act. I think the decision of the lower appellate Court was right and the appeal must be dismissed with costs.

Appeal dismissed.

R. R.

CIVIL REFERENCE.

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

ISOOB SAHIBA VALAD ABDUL RAHIM (ORIGINAL PLAINTIFF), DECREE-HOLDER v. HAIDAR SAHIBA VALAD IMAM SAHIBA (ORIGINAL DEFENDANT), OPPONENT *.

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 June 16.

Bombay Pleaders Act (Bombay Act XVII of 1920), section 10 (1)—Pleader appearing in a suit need not file fresh Vakalatnama in execution proceedings.

Applications for execution of decrees are proceedings in suits and do not require separate Vakalatnamas under section 10 (1) of the Bombay Pleaders Act, 1920.

* Civil Reference No. 4 of 1921.

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ISOOB
SAHIBA
v.
HAIDAR
SAHIBA.

THIS was a reference made by V. B. Halbhavi, Subordinate Judge at Honawar, under Order XLVI, Rule 1 of the Civil Procedure Code of 1908.

The letter of reference ran as follows :—

“The application for execution in this Darkhast has been presented by a pleader without a Vakalatnama from the applicant. Up to this time no fresh Vakalatnama was required in the case of such applications if one had been filed in the suits out of which these applications arose. The practice was based on Rule 2 (g) on page 187 of the Manual of High Court Circulars. This Rule referred to section 52, Regulation II of 1827 which contemplated that a pleader engaged in the suit was retained until the decree was satisfied. Though section 52 of the Regulation was repealed by section 42 of Act XVIII of 1879 this fact does not appear to have been noticed at the time of the making of Rule 2 (g) of the Manual. According to this Rule no fresh fee was allowed to a pleader in the course of execution proceedings. The new Act relating to pleaders (No. XVII of 1920) allows separate fees in the application for execution. Section 10 (3) specifically mentions cases in which no fresh Vakalatnama is necessary. Unless applications for execution are proceedings in suits a fresh Vakalatnama would be necessary in these cases. The explanation to section 647 of Act XIV of 1882 laid down that applications for execution were proceedings in suits. The explanation does not find a place in the new Civil Procedure Code. It was thought unnecessary. Even in the old Code it was needed only for regulating the procedure in certain proceedings. I think a fresh Vakalatnama is necessary in the present case. But I am not certain that I am quite correct in this view. The question is of daily occurrence and it is greatly to the public convenience that it should be authoritatively settled.

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“Therefore I submit the following question for decision of the High Court :—

“Whether applications for execution of decrees are proceedings in suits and do not require separate Vakalatnamas under section 10 (1) of Act XVII of 1920.”

ISOB
SAHIBA
v.
HAIDAR
SAHIBA.

The reference was heard.

V. R. Sirur, to support the reference.

G. P. Murdeshwar, to oppose the reference.

MACLEOD, C. J. :—This is a reference by the Subordinate Judge of Honawar asking this Court to decide the point whether applications for execution of decrees are proceedings in suits and do not require separate Vakalatnamas under section 10 (1) of Act XVII of 1920. We think the question should be answered in the affirmative. We see nothing in the Bombay Act XVII of 1920 which would change the ordinary practice with regard to Vakalatnamas. There is no necessity why an additional tax should be imposed upon litigants, and clearly the original Vakalatnama in the suit continues in force for the purpose of execution proceedings, although under the Act the Vakil is now entitled to a separate fee on account of those proceedings.”

Answer accordingly.

R. R.