

The Firm of Rai Bahadur Bansilal Abirchand - - - *Appellant*

v.

Ghulam Mahbub Khan and another - - - - - *Respondents*

FROM

THE COURT OF THE RESIDENT AT HYDERABAD (DECCAN).

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF THE
PRIVY COUNCIL, DELIVERED THE 20TH OCTOBER, 1925.

Present at the Hearing :

VISCOUNT FINLAY.

LORD CARSON.

LORD BLANESBURGH.

[*Delivered by* LORD BLANESBURGH.]

This is an appeal by the plaintiff from a judgment and decree dated the 27th September, 1922, of the Court of the Resident at Hyderabad, reversing a decree dated the 22nd November, 1921, of the Assistant Resident there, and restoring, albeit on other grounds, a decree made by the Civil Judge of Secunderabad, dated the 8th July, 1919.

The suit was commenced by the appellant in the Court of that Judge in September, 1911. Its purpose was to recover money lent by him so long ago as 1891 to the grandfather of the first respondent with repayment guaranteed, so it was alleged by the late Sir Asnam Jah, Prime Minister of Hyderabad, whose estate is represented in the suit by his son, the second respondent. The borrower, the alleged surety, and their respective representatives were, or are, all resident in Hyderabad, the capital of the Nizam's dominions. The appellant, however, has a place of business at Secunderabad, a neighbouring British cantonment, and asserting that the loans were both made and repayable there, he claimed that his suit in respect of them was cognizable by the local British Court.

But this was not the appellant's only reason for invoking that jurisdiction—if he could successfully do so. In the Courts of the Nizam his demands had long since been barred by lapse of time. In the British Court, however, he claimed to be entitled to escape from the operation of the Indian Limitation Act—an Act otherwise entirely applicable to the case—on the ground that the residence of the defendants in Hyderabad was a “foreign” residence which took his claim against them outside the statute although their residence was in fact only six miles away.

In the Courts below many matters of fact were canvassed. Most of these, concluded by concurrent findings, were before their Lordships treated as settled, and the arguments were addressed to one question only, viz., was the Court of the Civil Judge of Secunderabad entitled to entertain the suit at all.

That learned Judge had held that he had jurisdiction in the matter, but he dismissed the suit, holding on the view taken by him of the facts, that the appellant had been repaid all that was due to him.

The appellant appealed to the Assistant Resident at Hyderabad. His appeal was resisted only by the second respondent, and he, it is stated, did not there raise again his objection to the jurisdiction of the Court taken before the Trial Judge, and certain at least it is that the learned Assistant Resident made no reference to the point in his judgment, by which the claim of the appellant was in effect allowed in full. The second respondent then appealed to the Resident, and he, taking up the consideration of the question afresh, held that the Civil Judge of Secunderabad had no jurisdiction in the matter. On that ground he allowed the appeal and dismissed the plaintiff's suit, expressing, however, at the same time his concurrence with the findings of fact of the Assistant Resident where these were at variance with the findings of the Trial Judge. The plaintiff again appeals.

At the outset their Lordships would express their entire concurrence with the learned Resident in his observations upon the importance of this question of jurisdiction in such a case as the present. The respondents are both of them subjects of the Nizam, from whose cession, as the learned Resident points out, the jurisdiction of the Secunderabad Court practically proceeds. In these circumstances, and especially where, as here, the liability or non-liability of such defendants may actually depend upon it, the question of jurisdiction becomes of first importance, different in character from such a question when it arises merely as between one Court and another in British India. And, while their Lordships would not here have upheld, even if it had been pressed, the contention raised in his printed case by the appellant that this question of jurisdiction decided by the Trial Judge in his favour, and not reopened before the Assistant Resident, must now be treated as concluded against the respondents, they are gratified to record that that contention was not persisted in before the Board. Indeed, as they have already said, the arguments before them were confined to its discussion.

Its determination turns solely upon the question whether, in this case, within the meaning of s. 20 (c) of the Code of Civil Procedure, the cause of action wholly or in part, arose within the local limits of the Civil Judge of Secunderabad. The facts upon which the answer depends lie in a small compass.

In 1891 Muhammad Ala-ud-din-Khan, deceased, grandfather of the first respondent, was Silladar of Sir Asnam Jah Bahadur, Prime Minister of the Nizam. Having agreed to purchase 100 horses to form part of the bodyguard of the Prime Minister Ala-ud-din borrowed from the plaintiff Rs. 40,000 to pay for them, and arranged with the Paigah of the Minister for repayment of the loan with interest by monthly instalments by means of deductions from his salary in the manner which is thus described in a communication addressed on the 29th July, 1891, by the Secretary of the Minister to the Pay Office of the Paigah :—

“ The said Silladar for purchasing the horses has borrowed from Rai Bahadur Bansilal Abirchand the sum of Rs. 40,000 with interest at 1½ per cent., and has assigned the liability to pay the principal and interest by monthly instalments of Rs. 1,000 upon this Secretariat. Wherefore you had better pay to the person who may bring the chitti of the said sowcar the sum of Rs. 1,000 every month.”

The promise made to the plaintiff, the fulfilment of which was thus directed, was contained in a note which had been addressed by the same secretary to the plaintiff on 21st July, 1891, in which it is stated that every month at the time of distribution of pay of the force, after taking receipt of Khan Sahib a sum of Rs. 1,000 will be paid from the Ilaqa to the plaintiff's Ilaqadar, who may bring chitti signed by the plaintiff without any objection or prevention from the Sarkari Treasury until the principal and interest are fully liquidated.

In these terms was the promise of the Treasury made, and their Lordships are willing to accept without deciding that, as alleged by the plaintiff, they constituted a contract of suretyship, Ala-ud-din being the principal debtor.

His own obligation as such is expressed in a bond of the 25th July, 1891, in which he promises the plaintiff :—

“ That in repayment of the said sum [of Rs. 40,000] and until the principal and interest is repaid one instalment of a sum of Rs. 1,000 will be reaching you every month from out of the distribution of the pay of the force. Accordingly I have also caused a guarantee to be made for the said sum of money by means of a Rubkar dated the 21st July, 1891, from the office of the Secretary of Revenue. The instalment of Rs. 1,000 which has been agreed will reach you directly from the Treasury irrespective of the fact whether there is any saving from out of the salary of the horses or not There will be no failure in the instalments reaching you. If for any reason perchance one instalment is defaulted the said sowcar will have the power to sell immediately the horses by auction and recover and pay himself the total amount.”

A further advance of Rs. 5,000 was made by the plaintiff on 9th August, 1891, and a final advance of Rs. 7,628 on the 6th June,

1894. These for present purposes may be treated as having been made on the same terms.

As to their meaning and effect their Lordships are not in doubt. The Treasury or surety repayment is to be made to the plaintiff or his representative at the office of the Treasury at Allahabad, and the instalments, which in the principal debtor's bond are described as "reaching" the plaintiff are the very instalments of which payment is so to be made. 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.

Nor so far is there any such obligation assumed by the surety.

But it is contended, and the Trial Judge took the view, that such an obligation is to be found in two documents written in the year 1904, one on the 30th March, addressed by the Treasury Secretary to the appellant, and the other, on the 13th April, addressed by one department of the Prime Minister's establishment to another, a copy being forwarded to the appellant.

Their Lordships do not consider it necessary to discuss these documents in detail. They are satisfied that they were never intended to alter the contractual obligations of the surety. At most they indicated a substituted arrangement to be continued only so long as was convenient; there was neither intention to alter nor any consideration present for the alteration of the obligations as they then existed.

It follows that in their Lordships' judgment no part of the obligations either of the principal debtor or of the surety was to be discharged at Secunderabad. And no obligation was assumed there. No part of the plaintiff's cause of action accordingly arose within the local limits of the Court of the Trial Judge. He had no jurisdiction to entertain the suit, and in their Lordships' judgment the decree of the learned Resident was quite right.

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

In the Privy Council.

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ABIRCHAND

v.

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DELIVERED BY LORD BLANESBURGH.

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