

CIVIL REVISION.

Before Bhandari, C.J.

JOINT HINDU FAMILY KNOWN AS GANESHI LAL-
NAUBAT RAI THROUGH GANESHI LAL, AND OTHERS,—
Defendants-Petitioners

*versus*DALIP CHAND,— *Plaintiff-Respondent.*

Civil Revision No. 113 of 1954

1955

January, 31st *Indian Oaths Act (IX of 1919) Section 11—Offer made by one party and accepted by the other to be bound by oath—Party making the offer resiling therefrom—Whether can escape the consequences of section 11.*

Held, that a person who offers to be bound by an oath under the Indian Oaths Act and later resiles from the said oath cannot escape the consequences set out in section 11 for an offer of this kind on being accepted by the opposite party is in the nature of a binding contract and cannot be withdrawn. The Indian Oaths Act would be reduced to a farce if a person offering to be bound by an oath were to be allowed to withdraw the offer after it has been accepted by the opposite party.

Allah Rakha v. Punnun (1), followed; *Rup Singh Naval v. Mrs. Arjun Sen* (2), not followed.

Petition under section 44 of Act IX of 1919 read with section 115 of Civil Procedure Code for revision of the order of Shri Banwari Lal, Sub-Judge, 1st Class, Gurgaon, dated the 10th November, 1953, deciding the suit against Ganeshi Lal.

PREM CHAND PANDIT, for Petitioners.

D. N. AGGARWAL, for Respondent.

JUDGMENT

Bhandari,
C. J

BHANDARI, C.J.—This petition raises the question whether a person who offers to be bound by an oath under the Indian Oaths Act and later resiles from the said oath can escape the consequences set out in section 11 of the said Act.

The plaintiff in this case is one Dalip Chand while the defendants are a firm Ganeshi Lal-Naubat Rai and its two partners Ganeshi Lal and his son Naubat Rai. On the 4th October 1952 the

(1) A.I.R. 1941 Lah. 173

(2) A.I.R. 1935 All. 276

plaintiff brought a suit for the recovery of a sum of Rs. 12,700 on the basis of a pronote by which Naubat Rai promised to pay a sum of Rs. 10,000 to Dalip Chand. On the 1st July 1953 Naubat Rai made an offer that if the plaintiff took an oath on all the four Vedas that the pronote was for consideration, he would be bound by the oath and would have no objection to a decree being passed in favour of the plaintiff. The plaintiff accepted the challenge and agreed to take the oath required of him. On the 26th October 1953 Naubat Rai informed the Court that when he had offered to be bound by the oath, he was under the impression that if the plaintiff took the oath on the Vedas, a decree would be passed against Naubat Rai alone and that the case against his father Ganeshi Lal would be dismissed. This impression was later dispelled when the Court expressed the view informally that if the plaintiff took the oath in question, the suit would be decreed against Naubat Rai and that proceedings would continue against his father Ganeshi Lal. He accordingly requested the Court to permit him to withdraw the offer. The Court declined to accede to this request and adjourned the case to another day to enable the plaintiff to take the oath. On the 10th November 1953 the trial Court made the following order:—

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“The plaintiff has taken the prescribed oath on all the four Vedas as offered by the defendant Naubat Rai in his statement, dated 1-7-1953. This case so far as it relates to Naubat Rai defendant is to be decided on this oath. The trial of this suit as against Ganeshi Lal is to proceed on merits.”

The defendants are dissatisfied with this order and have come to this Court in revision.

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Mr. P. C. Pandit, who appears for the defendants, invites my attention to *Rup Singh Naval v. Mrs. Arjun Sen* (1), in which Bennet, J., expressed the view that where a party offers to be bound by an oath and later resiles from that agreement, the agreement terminates and the appellate Court has no jurisdiction to order that the trial Court should determine the case on oath. Mr. D. N. Aggarwal, on the other hand, relies upon *Allah Rakha v. Punnun* (2), in which Bhide, J., observed that the offer by a party to a suit as to being bound by a statement on oath of his opponent on being accepted by the opponent, is in the nature of a binding contract and cannot be withdrawn. After a careful consideration of the reasons on which each of these authorities is based I am inclined to concur in the view taken by Bhide, J.

There is another aspect of the case which needs to be considered. Section 12 of the Oaths Act provides that if a party or a witness refuses to make the oath, he shall not be compelled to make it, but that the Court shall record, as part of the proceedings, the nature of the oath, the fact that he was asked whether he would make it, and that he refused it, together with any reason which he may assign for his refusal. This provision has been made with the object of enabling the Court to draw the presumption that if a person who is required to take an oath refuses to do so and is unable to assign any good reason for his refusal, he is not telling the truth. The Legislature could not have intended that a person who offers to be bound by an oath should be at liberty to tell his opponent "If you refuse to take the oath, I shall ask the Court to draw an adverse inference against you. If you agree to take the oath, I shall resile from

(1) A.I.R. 1935 All. 276

(2) A.I.R. 1941 Lah. 173

the agreement and prevent you from obtaining any advantage over me. In either case I win and you lose." The Legislature could not have intended to put the opponent under a double disadvantage. The Indian Oaths Act would be reduced to a farce if a person offering to be bound by an oath were to be allowed to withdraw the offer after it has been accepted by the opposite party.

For these reasons, I would uphold the order of the trial Court and dismiss the petition with costs.

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CIVIL APPELLATE

Before Falshaw, J.

PYARE LAL AND OTHERS,—Plaintiffs-Appellants.

versus

MUNICIPAL COMMITTEE, LUDHIANA, ETC.,—Defendant-Respondent.

Regular Second Appeal No. 124 of 1950

1955

Punjab Municipal Act (III of 1911)—Section 172—
Indian Limitation Act (IX of 1908)—Article 146-A—Powers of the Municipal Committee whether affected by Article 146-A of the Limitation Act—Platform built in a public street remaining in existence for more than 30 years—Right to recover possession lost under the general law—Whether Committee can recover its possession under Section 172 of the Municipal Act. February, 7th

Held, that the Municipal Committee having allowed the platform built on public street to stand for more than 30 years without taking any action to remove it, and so lost its right to bring an ordinary civil suit for possession of the site, cannot invoke the provisions of Section 172 of the Punjab Municipal Act and take action under it. If this were the case it would render the provisions of Article 146-A of the Limitation Act wholly nugatory, and moreover it would leave it open to Municipalities to take summary action under section 172(2) in the very cases in which, as they concern ancient encroachments, full enquiry by a civil Court into the parties' rights is most essential.

Tayabali Abdullabhai Vohra v. Dohat Municipality (1), *Abaji Ragho Whalas v. Municipality of Jalgaon* (2), followed; *The Public Prosecutor v. Varadarajulu Naidu* (3), *Basaweswaraswami v. The Bellary Municipal Council and the*

(1) A.I.R. 1920 Bom. 9
(2) A.I.R. 1922 Bom. 111
(3) A.I.R. 1925 Mad. 64