

S. Kapur Singh, I.C.S., present case I would adopt the similar course and discharge the rule but order the respondent to pay Rs 100 as costs.

v.  
L. Jagat  
Narain

Falshaw J.

KHOSLA, J —I agree.

### REVISIONAL CIVIL

1951

April 20th

Before Soni, J.

THE GOVERNMENT OF RAJISTHAN JAIPUR, through  
GENERAL MANAGER BIKANER STATE RAILWAY,  
BIKANER,—*Petitioner.*

*versus*

MESSRS GIASI RAM-MOOL CHAND, through GIASI  
RAM, and (2) DOMINION OF INDIA,—*Respondents.*

#### Civil Revision No. 12 of 1951

*Civil Procedure Code (V of 1908), Section 86—Suit against Bikaner State Railway—Merger of State—New State of Rajasthan formed—Whether suit against a ruling chief—Consent of the Central Government under Section 86 whether necessary.*

*Held*, that the suit against the Government of Rajasthan stands on the same footing as a suit against His Highness the Maharaja of Bikaner and the consent of the Central Government under section 86 of the Civil Procedure Code was necessary and the suit having been filed without such consent was not maintainable.

*Petition under section 44 of Act 9 of 1919, Punjab Courts Act, for revision of the order of Shri G. S. Bedi, Sub-Judge, 1st Class, Gurgaon, dated the 15th August 1950, holding that the suit is competent in the absence of consent of the Central Government as laid down in section 86 of the Civil Procedure Code.*

BISHAN NARAIN, for Petitioner.

NEMO, for Respondents.

## JUDGMENT.

On the 3rd of October 1949, Messrs Giasi Ram-Mool Chand, a respondent in the present petition, brought a suit in the Court of the Subordinate Judge, Ist Class, Gurgaon, for the recovery of Rs. 749 on account of short delivery and damages to certain goods. One of the defendants was the Government of Rajasthan. A plea was raised on behalf of the Government of Rajasthan that section 86 of the Code of Civil Procedure barred the suit, the plea in effect being that sanction of the Government should have been obtained because it was a suit against a Ruling Chief. The trial Court repelled this contention and decided to proceed with the suit. This was on the 16th of August 1950. From that order a revision has been taken to this Court. The petitioner before this Court is the Government of Rajasthan. Though the plaintiffs Messrs Giasi Ram-Mool Chand were served, there has been no appearance on the plaintiffs' behalf and the case has been heard *ex parte* against them.

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Ram-Mool  
Chand  

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Soni J.

The case for the petitioner is that the suit was brought against the Bikaner State Railway because of short delivery and damages regarding goods despatched on the 22nd of July 1948, from Ellenabad Railway Station on the Bikaner State Railway to Rewari, a Railway Station on the B.B. and C. I. Railway. The Bikaner State Railway is a Railway owned by the State of Bikaner and as Bikaner has integrated with a number of other States in Rajasthan and is now included in the State of Rajasthan, the suit was brought against the State of Rajasthan. Mr Bishen Narain, learned counsel for the petitioner, referred to the History of Indian Railways published in 1942 by the Government of India. He referred to page 250 of this book in which it is stated that "the line is owned by the Bikaner Government except for the Nabha section of the Sadulpur-Rewari line, was worked by the Jodhpur-Bikaner Railway administration up to the 31st October 1924, when it was taken over by the Bikaner Government." Mr. Bishen Narain then

The Government of Rajasthan referred to a publication of the Government of India, Ministry of States, entitled White Paper on Indian States, published in 1950. In para 136 at page 54 of this book it is stated :

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“ As a result of these negotiations, a fresh Covenant (Appendix XL) was signed providing for the integration of the three major States of Rajputana, viz., Jaipur, Jodhpur and Bikaner and the State of Jaisalmer “with the former Rajasthan Union to form the United States of Rajasthan. This Union was inaugurated on the 30th March 1949.”

Appendix XL is to be found at page 274. The preamble of the Covenant in this Appendix states :

“ Whereas by a Covenant entered into by the Rulers of Banswara, Bundi, Dungarpur, Jhalawar, Kishengarh, Kotah, Mewar, Partabgarh, Shahpura and Tonk it has been agreed that the territories of the said ten States should be integrated into one State by the name of the United State of Rajasthan ;

“ And whereas it has been agreed, between the Rulers of the said ten States and the Rulers of Bikaner, Jaipur, Jaisalmer and Jodhpur that the said United State of Rajasthan should be reconstituted by the integration of the territories of all the fourteen States ;

“ The Rulers aforesaid do hereby, in and with supersession of the said Covenant and with the concurrence and guarantee of the Government of India, enter into this Covenant.”

In Article 3 it is stated that there shall be a Council of Rulers consisting of the Rulers of all the Covenanting States, provided that no Ruler who is less than 21 years of age shall be a member of the Council.

Mr Bishen Narain's argument in bringing forward these quotations from the above books is that the Bikaner State Railway is owned by the Ruler of Bikaner and the fact that the State of Bikaner and other States have joined together into the United States of Rajasthan makes no difference in law. In law this is a confederacy of Rulers and the Bikaner State Railway being owned by the Ruler of Bikaner, the proper authority against whom a suit could be brought for anything alleged to have been done by the Bikaner State Railway would be the Ruler of Bikaner. The identity of the Ruler of Bikaner still subsists in spite of the fact that there is United State of Rajasthan because that State of Rajasthan is governed by the Council of Rulers. Mr Bishan Narain's argument is that the suit should really have been against the Ruler of Bikaner and the Government of Rajasthan represents the Ruler of Bikaner in this suit. In support of his argument Mr Bishan Narain has drawn my attention to a judgment of their Lordships of the Privy Council reported in *Gaekwar Baroda State Railway v. Hafiz Habib-ul-Haq* (1). In that case a suit was brought against the Gaekwar Baroda State Railway and it was found that the State Railway was owned and managed by His Highness the Maharaja of Baroda through his men. Their Lordships held that a suit could only be brought against a juristic entity and the juristic entity was his Highness the Gaekwar of Baroda and if the suit were to be brought against His Highness the Gaekwar of Baroda, sanction of Government under section 86 Civil Procedure Code, would have to be obtained, and it not having been obtained, the suit was bad. Their Lordships referred to sections 86 and 87 of the Civil Procedure Code and said—

“The sections relate to an important matter of public policy in India and the express provisions contained therein are imperative and must be observed.”

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(1) 1938 A. I. R. (P. C.) 165.

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Their Lordships held that the suit was in reality, though not in form, a suit against His Highness the Gaekwar of Baroda and if the judgments of the Courts in India were allowed to stand they would have far-reaching results and might have the effect of nullifying the provisions of sections 86 and 87, Civil Procedure Code. In conclusion their Lordships held that the suit was not maintainable. In my opinion the suit against the Government of Rajasthan stands on the same footing as the suit against His Highness the Maharaja of Bikaner and the provisions of section 86, Civil Procedure Code, should, in my opinion, have been complied with. This section reads—

“Any such Prince or Chief, \* \* \* \* \* may, in the case of the Ruling Chief of an Indian State with the consent of the Central Government, certified by the signature of a Secretary to that Government, but not without such consent, be sued in any competent Court.”

It appears to have been admitted in the trial Court that there was no such consent. This being so, the suit is not maintainable.

I would, in the circumstances, accept this revision petition and dismiss the suit against the Government of Rajasthan. The trial Court will give effect to this order, giving this Government costs in the suit before it.