

## APPELLATE CIVIL

Before Harnam Singh, J.

Mr. CHARANJIT RAI MARWAHA AND ANOTHER,—Appellants

versus

M/s. GHANSHAM DASS-HANUMAN PARSHAD,—Respondent

1953

Sept. 2nd.

First Appeal from order No. 32 of 1951

*High Court Rules and Orders, Vol. I, Chapter 13, para 6—Ex parte proceedings against a defendant in a suit—Suit transferred by an administrative order from the Court which passed the ex parte order to another Court—Notice whether necessary on such transfer—No notice of suit given to the defendant who had been proceeded ex parte—effect of.*

Held, that in view of the provisions of para 6, volume I, High Court Rules and Orders, notice has to be sent to parties when a case is transferred, from one Court to another. The defendant does not cease to be a party after the *ex parte* proceedings have been ordered against him. The defendant was thus entitled to notice on the transfer of the case and it being not given, he was prevented by sufficient cause from appearing when the suit was called on for hearing, and the *ex parte* decree should have been set aside.

*First appeal from the order of Shri Parshotam Sarup, Sub-Judge, 1st Class, Delhi, dated the 3rd November 1950, dismissing the application with costs.*

K. L. GOSAIN, for Appellants.

D. K. KAPUR and HARNAM DASS, for Respondent.

## JUDGMENT

HARNAM SINGH, J. On the 18th of October 1948, Messrs Ghansham Das-Hanuman Parshad instituted civil suit No. 624 of 1948, for the recovery

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Mr. Charanjit of Rs. 16,262-11-9. In that suit the New Lakshmi Rai Marwaha Stores, Anarkali, Lahore, Lala Ganpat Rai and others Lala Charanjit Rai were the defendants. In the early stages of the suit the proceedings were taken v. M/s Ghansham in the Court of Shri Gulal Chand, Subordinate Dass-Hanuman Judge.

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On the transfer of Shri Gulal Chand the case Harnam Singh, was taken up by Shri Mohindar Singh Matharu. By an administrative order passed on the 4th of February 1950, the case was withdrawn from the Court of Shri Mohindar Singh and was transferred to the Court of Shri Purshotam Sarup.

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On the 4th of February 1950, defendant No. 2 appeared in the Court of Shri Purshotam Sarup while the plaintiffs and defendants Nos. 1 and 3 did not appear. On that day Shri Purshotam Sarup ordered :—

“Received by transfer, Plaintiff absent, Defendants 1 and 3 absent. Defendant No. 2 present with Sardar Balbir Singh, Advocate. Defendants 1 and 3 are being proceeded against *ex parte*. Notice to counsel for plaintiff to issue for the 11th February 1950.”

Pursuant to the order passed on the 4th of February 1950, notice was issued to the plaintiff for appearance in Court on the 11th of February 1950. On the last-mentioned date the Court ordered :—

“Lists of witnesses and documents have been filed. To come up for evidence now on the 29th March 1950 and scrutiny on the 6th March 1950. Application for commission and diet money to be put in within a week.”

In these proceedings it is common ground that Shri Dwarka Das Kapur at no stage of the suit was a counsel for defendant No. 3. From the power of attorney filed by Shri Dwarka Das Kapur it is apparent that he was defending Lala Ganpat Rai

and not Lala Charanjit Rai. Clearly, counsel for Mr. Charanjit defendant No. 3 did not put in appearance on any day of the enquiry in civil suit No. 624 of 1948 in the Court of Shri Purshotam Sarup, Subordinate Judge.

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On the 10th of March 1950, plaintiff gave up the claim against defendant No. 2 and orders were passed for the examination of evidence on the 11th of March 1950.

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On the 11th of March 1950, Sri Nath, P. W. 1, gave evidence. On the evidence given by Sri Nath the Court passed an *ex parte* decree in a sum of Rs. 16,262-11-0 with costs and future interest against defendants Nos. 1 and 3.

On the 27th of March 1950, defendant No. 3 applied under order IX, rule 13, Civil Procedure Code for the setting aside of the *ex parte* decree passed in civil suit No. 628 of 1948 on the 11th of March 1950. That application was resisted by the plaintiff and on the pleadings of the parties the Court fixed the following issues :—

- (1) Are there sufficient reasons for setting aside the *ex parte* decree?
- (2) Is the application within time?
- (3) Is the decree a nullity and can such an objection be taken in this application?

On issue No. 2 the Court found that the application was within time. On issue No. 3 the Court found that the decree was not a nullity. Finding that there was no sufficient reason for setting aside the *ex parte* decree the Court dismissed the application with costs.

Defendant No. 3 comes up in appeal under Order XLIII, rule 1, of the Code of Civil Procedure from the order rejecting the application for setting aside the *ex parte* decree.

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Mr. Kundan Lal Gosain urges that the Court ought to have issued notice to defendant No. 3 or his counsel when the case was transferred from the Court of Shri Mohindar Singh Matharu to the Court of Shri Purshotam Sarup on the 4th of February 1950. In support of the contention raised counsel cites *L. Krishan Lal Malhotra v. Madan Lal* (1). In that case Lala Krishan Lal was being proceeded against *ex parte* when the suit was transferred by an administrative order from one Court to the other. On the transfer of the suit no notice was given to Lala Krishan Lal. In deciding the point Mohammad Sharif, J., said :—

“It may be recalled that the case was transferred by the District Judge from the Court where it was pending to that where it was decided. A fresh notice was sent to the plaintiff and the defendant was not considered entitled to a notice for the simple reason, that he was being proceeded against *ex parte*. The rule on the subject is contained in Vol. 1, Chap. 13, para 6, High Court Rules and Orders, and may now be quoted :—

“When a case is transferred by administrative order from one Court to another, the Presiding Officer of the Court from which it has been transferred shall be responsible for informing the parties regarding the transfer, and of the date on which they should appear before the Court to which the case has been transferred. The District Judge passing the order of the transfer shall see that the records are sent to the Court concerned and parties informed of the date fixed with the least possible delay. When a case is transferred by judicial order the Court passing the order should fix a

date on which the parties should attend the Court to which the case is transferred." Mr. Charanjit Rai Marwaha and others

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From a perusal of paragraph No. 6 of Vol. 1, M/s Ghansham High Court Rules and Orders it is plain that notice has to be sent to parties when a case is transferred from one Court to another. In my opinion, the defendant does not cease to be a party after the *ex parte* proceedings have been ordered against him. That being so, it is plain that Lala Charanjit Rai was entitled to notice on the transfer of the case from the Court of Shri Mohindar Singh Matharu to the Court of Shri Purshotam Sarup on the 4th of February 1950. That notice was not given with the result that Lala Charanjit Rai was prevented by sufficient cause from appearing when the suit was called on for hearing.

Mr. Dalip Kumar Kapur appearing for the plaintiff-respondent urges that notice was not sent to Lala Charanjit Rai for in the Court of first instance he failed to put in address as required by Order VIII, rule 12, of the Code of Civil Procedure. From what I have said above it is plain that that was not the reason why notice was not sent to Lala Charanjit Rai. In civil suit No. 624 of 1948 evidence was to be examined on the 29th of March 1950, but the examination of the evidence was postponed to the 11th of March 1950. Notice of the order by which the evidence was ordered to be examined on the 11th of March 1950, was also not given to Lala Charanjit Rai.

For the foregoing reasons I find that Lala Charanjit Rai was prevented by sufficient cause from appearing on the 11th of March 1950, when evidence was examined and *ex parte* decree for a sum of Rs. 16,262-11-0 with costs and future interest was passed against him.

In the result, I allow the appeal. set aside the *ex parte* decree and direct the parties to appear in the Court of first instance on the 12th of October 1953.

No orders as to costs.