

REVISIONAL CIVIL

Before Kapur, J.

THE NORTHERN INDIA MATCHES, LTD., HIMACHAL
PRADESH,—Petitioner,

versus

KRISHAN LAL,—Respondent.

Civil Revision No. 355 of 1951

1952

June 6th

Displaced Persons (Institution of Suits) Act (XLVII of 1948), sections 3 and 4—Company—Whether a displaced person—Residence—Registered office in Pakistan, but the administrative office in India—Agreement giving jurisdiction to a particular Court—Effect of.

Held, that a company which is a legal person can have a place of residence just as much as an individual can have and therefore the provisions of sections 3 and 4 of the Displaced Persons Act become applicable to incorporated companies.

Held further, that a company which had its administrative office and principal place of business already in India cannot be said to be a displaced person merely by reason of the fact that it had its registered office in Pakistan and had shifted the same to India.

Held also, that in view of section 4 of Displaced Persons (Institution of Suits) Act, a displaced person can institute a suit in a Court within the local limits of whose jurisdiction he actually and voluntarily resides in spite of an agreement to the contrary.

Petition under section 44 of Act 9 of 1919, for Revision of the order of Shri Chander Gupt Suri, Sub-Judge, 1st Class, Delhi, dated the 29th March 1951, holding that Delhi Civil Court has jurisdiction to hear the suit.

SHAMAIR CHAND, for Petitioner.

K. L. GOSAIN, for Respondent.

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JUDGMENT

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KAPUR, J. This is a rule directed against an order passed by Mr. Chander Gupt Suri dated the 29th of March, 1951, holding that the Civil Courts at Delhi had jurisdiction to try the suit. 4

The plaintiff is Krishan Lal who brought a suit for recovery of Rs 5,000 being the money deposited by the plaintiff with the defendant and interest thereon and for refund of money which was charged in excess for the price of goods supplied. The plaintiff alleged that he was an agent of the defendant Company for the sale of its goods in Rawalpindi ; that the agency work was to be carried on in Rawalpindi and he also paid the money at Rawalpindi and therefore the cause of action arose at Rawalpindi and as he is now a displaced person he can under the Displaced Persons (Institution of Suits) Act, 1948, bring the suit in Delhi, the defendant not being a displaced person.

The defendant took objection to the jurisdiction of the Court at Delhi and pleaded that no part of cause of action arose in Rawalpindi and therefore in Pakistan and he also stated in his written-statement " Besides this the defendant is also a displaced person with its office at Jogindarnagar and a registered office at Gujranwala which has been shifted to Jogindarnagar on the 11th August 1947. "

The learned Judge has held that a part of the cause of action arose in Pakistan and that the defendant being a juristic entity cannot be a displaced person within the meaning of that word as used in section 3 of the Displaced Persons (Institution of Suits) Act, 1948 hereinafter termed ' Displaced Persons Act ' and therefore he held that the suit was triable in the Court at Delhi. The defendant has come up in revision to this Court.

Counsel for the petitioner submits that the finding of the learned Judge that a limited company cannot reside within the meaning of the Act is erroneous and in support he relies on a judgment of Soni J. in

Messrs, Steel and General Mills Company Ltd. v. The Northern India General Accident Fire and Life Assurance Corporation Ltd. (1). In reply to this the opposite party relies on a judgment delivered by me on the 1st of June 1950 in *C. R. No. 167 of 1950* where I held following a judgment of Coutts-Trotter, C.J., in *Govindarajulu Naidu v. Secretary of State* (2) and a judgment of the Lahore High Court in *R. J. Wyllie and Co. v. Secretary of State for India* (3) that the word 'reside' must be taken to refer to natural persons and not to legal entities.

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Before the question of law is discussed there are certain facts of this case which must be mentioned. The record shows and particular reference may be made to Exts. P. 1 to P. 4 that the registered office of the respondent company was at Gujranwala but the works and the Head Office were in Jogindernagar. Ex. P. 3 shows that the agreement of agency was entered into before 31st May 1945. The terms and conditions of the agency Ex. P. 1 also show that all suits had to be brought at Jogindarnagar. The words used in the contract are "subject to Jogindernagar jurisdiction." As a matter of fact one of the pleas taken by the defendant is that "there was a special contract between the parties that every dispute between the parties shall be subject to the jurisdiction of Jogindarnagar court." The company also pleaded that the contract was concluded at Jogindarnagar. All the letters which are on the record and which were either sent by the company to the plaintiff or by the plaintiff to the company were addressed to the company at Jogindarnagar and were replied to from there. In his statement as a witness the Managing Director of the company Dewan Raghunath Das as D. W. 1 has stated that the offer by the plaintiff to become an agent was accepted at Jogindernagar and the letter of appointment as agent was also sent to the plaintiff from that place and the security was also received there. The statement also shows that the factory was at Jogindernagar even

(1) 54 P. L. R. 139

(2) A. I. R. 1927 Mad. 689.

(3) A. I. R. 1930 Lah. 818

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before the partition and the administrative office was also there. The supply of the goods and dealings with the agents were mainly conducted from Jogindarnagar. The documents placed on the record by the plaintiff and the evidence of D. W. 1, the Managing Director of the respondent company, show that the company had its administrative office in Jogindernagar before the partition. The documents placed by the plaintiff also show that even the head office was at Jagindernagar, and indeed it was the intention of the defendant that all suits which were brought against the defendant would be filed in Jogindernagar Courts.

Two documents have been placed on the file by the defendant company, Exhs. D. 1 and D. 2. D. 1 contains the terms and conditions of the agency and is the same as Exh. P. 1. D. 2 is a copy of a certificate from the Registrar of Joint Stock Companies, Mandi State, Mandi, showing that the document relating to transfer of Head Office from Gujranwala to Baij Nath, District Kangra, had been filed with him. No copy of the resolution has been placed on the record showing that the company had transferred its registered office from Gujranwala to Baij Nath, nor is it shown that any notice of the change in the registered office was given within 28 days under section 72 (2) of the Indian Companies Act.

In re Janbazar Manna Estate, Limited (1) it was held by Panckridge J. that in order to change the registered office, it is not sufficient to pass a resolution to that effect; the change must be notified to the Registrar of Joint Stock Companies. It is therefore not proved that there has been a change of the registered office of the company from Gujranwala to Jogindernagar. But even if it was, there is sufficient evidence and I must so hold that the administrative office of the Company was even before the 31st of May 1945 in Jogindernagar.

In these circumstances the point for determination is whether the suit can be brought in Delhi and for this it has to be decided whether sections 3 and 4

(1) I. L. R. (1931) 58 Cal. 716.

of the Displaced Persons Act apply to the circumstances of this case These sections provide as follows :—

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- “ 3. *Definition.* In this Act, “displaced person” means any person who, on account of the setting up of the Dominions of India and Pakistan, or on account of civil disturbances or fear of such disturbances in any area now forming part of Pakistan, has been displaced from, or has left, his place of residence in such area after the 1st day of March 1947, and who has subsequently been residing in India.
4. *Institution of suits by displaced persons.* Notwithstanding anything contained in section 20 of the Code of Civil Procedure, 1908 (V of 1908), or in any other law relating to the local limits of the jurisdiction of Courts or in any agreement to the contrary, a displaced person may institute a suit in a Court within the local limits of whose jurisdiction he or the defendant or any of the defendants, where there are more than one at the time of the commencement of the suit, actually and voluntarily resides, or carries on business, or personally works for gain, if—
- (i) the defendant, or where there are more than one, each of the defendants, actually and voluntarily resides or carries on business, or personally works for gain in India and is not a displaced person ;
 - (ii) the cause of action, wholly or in part, arises or has arisen in a place now situated within the territories of Pakistan ;
 - (iii) the Court in which the suit is instituted is otherwise competent to try it ; and
 - (iv) the suit does not relate to immovable property.”

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Messrs, Steel and General Mills Co. Ltd. v. General Accident Fire and Life Assurance Corporation Ltd (1) the case which has been cited by Mr Shamair Chand, was a case where the administrative office of the plaintiff company had been brought from Lahore to Delhi, but its registered office was at Amritsar and it was the form or fact that is, of the administrative office being in Delhi on which the question of the residence of the company was decided to be in Delhi. If it is correct, as I have held it to be, that the Head office, the factory and the administrative office of the company was in Jogindernagar before the relevant date, that is, the 1st of March 1947, then on the case cited the company must be taken to be residing in India before the relevant date.

Mr Shamair Chand, however, submitted that the company must be taken to reside at its registered office. I have already held that it has not been proved that the registered office had been transferred from Gujranwala to a place which is now in India, but even if it was, the question remains whether the company will be a displaced person for the purposes of the Displaced Persons Act. A large number of cases have been cited. They have also been considered by Soni J. in the judgment which I have referred to above.

In re Travancore National and Quilon Bank Ltd. (2) it was held that the domicile of a corporation is the place considered by law to be the centre of its affairs, which (1) in the case of a trading corporation is its principal place of business, i.e., the place where the administrative business of the corporation is carried on; (2) in the case of any other corporation is the place where its functions are discharged. The question in each case is where is it that the real business of the company is carried on? The domicile of a corporation is therefore the place where "the brain which controls the operations of the company is situate." The same view has been taken by Cheshire on *Private International Law*, Third Edition at page

(1) 54 P. L. R. 139

(2) A. I. R. 1939 Mad. 318

244. The learned author has stated the law in the following words :—

“ A company is regarded by the law as resident in the country where the centre of control exists, i.e., where the seat and directing power of the affairs of the company are located. The place of incorporation is only one of the evidentiary facts to be considered in the course of ascertaining where the control resides ”.

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In *Newby v. Von Oppen and the Colts Patent Firearms Manufacturing Company* (1) at page 296 Blackburn J. said—

“ The American company are carrying on trade themselves in London, and therefore, we think, must be treated as resident there ”.

For a similar reason in *Carron Iron Company v. James Macharen* (2) a Scottish corporation was held to be a resident in London.

In *Cesena Sulphur Company v. Nicholson and Calcutta Jute Mills Company (Limited) v. Nicholson* (3) it was held that a company resides where its place of management is, where books are kept and dividends are received and distributed. In that case although the companies were doing business in Italy and India the companies were held to be residents in England for the purposes of income-tax.

In *The San Paulo Railway Company (Limited) v. S. G. Carter* (4) which was again an income-tax case a company which owned a railway abroad was held to be carrying on trade in England and was chargeable with income-tax there.

(1) VII Q. B. 293

(2) V. H. L. C. 416

(3) (1876) 1 Ex. D. 428.

(4) XII T. L. R. 107

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In *De Beers Consolidated Mines Limited v. Howe*
(1) Lord Loreburn L. C. observed—

“In applying the conception of residence to a company, we ought, I think, to proceed as nearly as we can upon the analogy of an individual. A company cannot eat or sleep, but it can keep house and do business. We ought, therefore, to see where it really keeps house and does business. An individual may be of foreign nationality, and yet reside in the United Kingdom. So may a company”.

A reference was then made to *Egyptian Delta Land and Investment Company Limited v. Todd* (2) where it was held for income-tax purposes residence is preponderantly if not exclusively determined by the place where its real business is carried on. At p. 15 Viscount Sumner said—

“If the respondent company has no place of trade here and does nothing in its head office but the minimum and occasional formalities required by the Act, it is surely an impossible straining of plain words to call that its ‘ordinary residence’. I cannot find anything to forbid the discharge of these obligations by purely mechanical means.”

In this case the test of taxable residence was held to be the carrying on of business in England and not the bare operation of the Companies (Consolidation) Act.

In another case which was also decided by the House of Lords *Swedish Central Railway Company Limited v. Thompson* (3) Viscount Cave L. C. said at p. 501—

“The effect of this decision is that, when the central management and control of a company abides in a particular place, the company is held for purposes of income-tax to

(1) (1906) A. C. 455 at p. 458

(2) 1929 A. C. 1

(3) 1925 A. C. 495

have a residence in that place ; but it does not follow that it cannot have a residence elsewhere. An individual may clearly have more than one residence : see *Cooper v. Cadwaleder* (1) and on principle there appears to be no reason why a company should not be in the same position. The central management and control of a company may be divided, and it may keep house and do business " in more than one place ; and if so, it may have more than one residence."

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In *New York Life Insurance Co. v. Public Trustees* (2) the Court of appeal had to consider the position of an American Life Assurance Corporation which carried on its business in its own name in most of the civilized countries of the world and the Court held that a debt incurred by it in this country (England) payable at its office in this country (England) was situate here both because the company was resident here and because it had localised the debt here. In *New Zealand Shipping Co. v. Thew* (3) Lord Buckmaster, called the "real residence", where the real business is carried on, the other the place where the company is incorporated and has a registered office where it exercises at any rate some of the functions of its corporate life, where the laws operate which brought it into existence, regulate its constitution and will regulate its dissolution.

Martin Wolf in his treatise on Private International law, 1945 Edition, at page 299 has stated the law as follows :—

" A legal entity is deemed to be domiciled at the place where the centre of its administration lies, and resident at any place where some substantial business is done. The legal person like the natural person, has one domicile only and may have more than one residence."

(1) (1904) 5 Tax Cas. 101

(2) (1924) 2 Ch: 101

(3) 8 Tax Cas. 228

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I have already referred to *Carron Iron Company v. James Maclaren* (1). At p. 449 Lord ST Leonards said—

“The first question is, where are the appellants within the jurisdiction, so as to authorise the Court to enjoin their proceedings? They are incorporated and they are called a Scotch corporation; their manufactories are in Scotland, but they have houses of business in England, which they necessarily carry on by agents or managers; and they have real as well as considerable personal property in England. The testator was a shareholder at his death, to the extent of Rs 80,000; and his representatives are entitled to his shares, and are, in truth, partners in the concern. I think that this Company may properly be deemed both Scotch and English. It may, for the purposes of jurisdiction be deemed to have two domiciles.

The learned Chief Justice (Weston C. J.) in *The New Hindustan Bank Limited v. Ratan Lal* (2) said—

“I can see no reason to imagine that the intention of the Legislature when enacting the Displaced Persons (Institution of Suits) Act, 1948, was to discriminate between individuals and companies and I think there is no difficulty in accepting the residence of a company for the purposes of this Act as the place where its registered office was situate. If this is correct then the plaintiff Bank satisfies the definition of section 3 of the Act.”

(1) 5 H. L. C. 416

(2) C. O. No. 91 of 1949

A consideration of all these authorities which have been cited shows that a company which is a legal person can have a place of residence just as much as an individual can have and therefore the provisions of sections 3 and 4 of the Displaced Persons Act become applicable to incorporated companies. Applying the law which the various rulings have laid down to the facts of the present case, I hold that if a corporation which was carrying on a business in Pakistan and had its registered office there chooses to transfer its business from a place in what is now Pakistan to a place in what is now India, it would be covered by section 3 of the Act. But if its administrative office and principal place of business was already in India it cannot be said for the purposes of this Act and in the circumstances such as exist in this case that it is a displaced person. The case decided by Soni J. with which I agree and in which reference is made to several of the cases which I have now discussed, shows that for purposes of residence the existence of the administrative office in this country is sufficient. The evidence shows, as I have already held, that the business of the company was being carried on and administered from Jogindernagar in India and therefore it cannot be said that in this particular case this company is a displaced person.

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I must now discuss the case *The Punjab and Kashmir Bank v. Des Raj* (1) which I decided and to which reference has been made by plaintiff's counsel. I relied on two judgments there. In *Govindarajulu Naidu v. Secretary of State* (2) Coutts-Trotter, C.J., said—

“The word ‘resides’ (in section 20 of the Civil Procedure Code) must be taken to refer to natural persons.”

I also referred to a Lahore case *R. J. Wyllie and Co. v. Secretary of State* (3) which took the same view. In

(1) C. R. No. 167 of 1950
(2) A. I. R. 1927 Mad. 689
(3) A. I. R. 1930 Lah. 818

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both these cases, however, the question for decision was whether a suit could be brought against the Secretary of State in the respective Courts where the suits were brought and it was really in connection with that that the word 'resides' was used. On considering the matter in the light of the various cases which have now been cited and which were not brought to my notice then, I am of opinion that the better view is that a legal entity like a corporation can have a place of residence.

The question then remains to be decided as to what is the effect of the terms of agency where Jogindernagar Courts are given exclusive jurisdiction to try the disputes. That is covered by section 4 of the Displaced Persons Act, because in spite of any agreement to the contrary a displaced person can institute a suit in a Court within the local limits of whose jurisdiction he actually and voluntarily resides.

I therefore hold that the suit has been rightly brought in the Court at Delhi and I dismiss this petition and discharge the rule. In the circumstances of this case I leave the parties to bear their own costs in this Court.

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Before Khosla and Harnam Singh, JJ.

R. S. BALMOKAND KOHLI AND 17 OTHERS,—*Petitioners,*

versus

STATE OF PUNJAB,—*Respondent.*

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Civil Writ No. 190 of 1951

Punjab Urban Immovable Property Tax Act, XVII of 1940—Sections 1 (2), 9 and 18 (1)—Whether notification necessary applying the Act to an area included in a rating area subsequently under section 1 (2)—Whether preparation of a separate valuation list necessary on the inclusion of