

tioned in section 16 of the Arbitration Act, 1940, then unless remission of the same is likely to cause injustice to one of the parties it would not be expedient to render nugatory all the expenses incurred under the reference. Nothing has been shown in this case as to why the Court was not justified in trusting the Arbitrator.

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I next have to consider the submission of Mr. J. P. Chopra that the Court having come to the conclusion that the award deserves to be set aside was not justified in remitting the same to the Arbitrator. I do not agree. In substance what the trial Court holds is that because the award is not intelligible, it cannot be made a rule of the Court. It is only in cases where an award suffers from any infirmity specified in section 16 that the Court can exercise its discretion to remit the same. For example, if the Court is of the opinion that an award suffers from an error apparent on its face, the Court may either set it aside or in exercise of its discretion remit it for reconsideration by the Arbitrator. In the present case all that the learned Subordinate Judge held was that the Arbitrator had failed to decide as to how much was being awarded under which distinct head. In these circumstances the Court was perfectly justified in sending the award back to the Arbitrator. In the result the petition fails and is dismissed with costs.

B.R.T.

FULL BENCH

Before S. S. Dulat, A. N. Grover and H. R. Khanna, JJ.

GANGAGIR,—Appellant

versus

RASAL SINGH AND ANOTHER,—Respondents

Regular First Appeal No. 15 of 1957

Code of Civil Procedure (Act V of 1908)—S. 92—Suit under, filed in the Court of District Judge—District Judge assigning it for disposal to Additional District Judge—Such Additional District Judge—Whether competent to try and decide the suit—Punjab Courts Act (VI of 1918)—S. 21 and Patiala and East Punjab States Union Judicature Ordinance, 2005 Bk.—S. 76—Effect of.

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March, 3rd.

Held that, in section 92 of the Code of Civil Procedure the Legislature has provided that the suits specified therein should be instituted in the principal Civil Court of original jurisdiction, which is the Court of the District Judge, from which it is obvious that this special provision has been made by the Legislature in view of the importance of the cause of action to be tried. Under section 92 of the Code of Civil Procedure it is not only the institution of the suit, but its subsequent trial and disposal also which must take place in the Court of the District Judge, and if the matter had stood there, the District Judge alone would be competent to try and dispose it of. But there is no reason for not giving full effect to the provisions contained in section 76 of the Patiala and East Punjab States Union Judicature Ordinance, 2005 Bk. or section 21 of the Punjab Courts Act, 1918, under which the District Judge can assign a part of the business pending before him to the Additional District Judge and when he does so, the latter can exercise the same powers and functions which the District Judge can. In view of the provisions contained in section 92 of the Code and section 21 of the Act or section 76 of the Ordinance, the suit must be instituted in the Court of the District Judge, but there is no bar or prohibition against the exercise of his powers of assigning the business to the Additional District Judge, and once such suits are assigned to him, he would be as competent to deal with it as the District Judge. The word "business" appearing in section 76 of the Ordinance or section 21 of the Act cannot be given a narrow or restricted meaning and that would include all the work which is pending before the District Judge. When a suit under section 92 of the Code is instituted in his Court, it becomes a part of the business pending before him, with the result that it can be assigned by him to the Additional District Judge under section 21(2) of the Act and in that event the latter would be fully competent to deal with and dispose of the suit in the same manner as the District Judge.

Case referred by Division Bench consisting of the Hon'ble Mr. Justice A. N. Grover and the Hon'ble Mr. Justice H. R. Khanna, on 15th July, 1964, for decision of the important question of law involved in the case. The Full Bench consisting of the Hon'ble Mr. Justice S. S. Dulat, the Hon'ble Mr. Justice A. N. Grover and the Hon'ble Mr. Justice H. R. Khanna, after deciding the question of law referred to them, returned the case to the Division Bench for final disposal.

Regular First Appeal from the decree of the Court of Shri Sardari Lal Chopra, Additional District Judge, Sangrur, dated 30th November, 1956, decreeing the plaintiff's suit and ordering that Ganga Gir defendant be removed from the Trusteeship of Dera Baba Ram Chander Gir and the property attached to the Dera and in his place, the Nagar Panchayat of Kirsola be appointed Trustees of the said property and it was directed that they will engage some Pujari to perform the necessary religious ceremonies and they will maintain regular accounts of the income and expenditure. The defendant was directed to render account of the income and expenditure of the Dera property

for 6 years preceding the institution of the suit, on or before 31st January, 1957 and leaving the parties to bear their own costs.

N. N. GOSWAMY, AND M. R. AGNIHOTRI, ADVOCATES, for the Appellant.

D. C. GUPTA, J. V. GUPTA AND B. S. GUPTA, ADVOCATES, for the Respondents.

ORDER OF THE FULL BENCH

GROVER, J.—The short question which has to be answered by the Full Bench is whether the Court of the Additional District Judge, Sangrur, was not competent to try and dispose of a suit under section 92 of the Code of Civil Procedure.

Grover, J.

There is no dispute on the facts of the case out of which above point has arisen. In 1955 a suit was filed under section 92 for removal of the defendant from the management of the property of Dera Baba Ram Chander Gir in village Kirsola, Tehsil Jind, for rendition of accounts etc., and for appointment of a new Manager. The plaint was presented on 2nd December, 1955 in the Court of the District Judge. On 6th December, 1955 it was ordered that the case should be put up before the District Judge on 8th December, 1955. Some objection was raised with regard to court-fee on 8th December, 1955. After the written statement had been filed, it seems that the case was transferred to the Court of Additional District Judge and issues were framed on 4th April, 1956. Issue No. 5 was to the following effect:—

“Is this Additional Court of the District Judge, Sangrur, not competent to hear this suit?”

The Additional District Judge made an order on 8th May, 1956 disposing of this issue saying that the suit had originally been instituted in the Court of the District Judge and he had made over the case to his Court for disposal. There was nothing wrong in the order of transfer and, therefore, the aforesaid issue was decided against the defendant.

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Now, section 92 of the Code of Civil Procedure provides :—

“(1) In the case of any alleged breach of any express or constructive trust created for public purposes of a charitable or religious nature, or where the direction of the Court is deemed necessary for the administration of any such trust, the Advocate-General, or two or more persons having an interest in the trust and having obtained the consent in writing of the Advocate-General, may institute a suit, whether contentious or not, in the principal Civil Court of original jurisdiction or in any other Court empowered in that behalf by the State Government within the local limits of whose jurisdiction the whole or any part of the subject-matter of the trust is situate to obtain a decree—

* * * * *

At the time the suit was instituted, the Patiala and East Punjab States Union Judicature Ordinance, 2005 Bk. (hereinafter called the Ordinance) was in force in the erstwhile State of Pepsu. The District of Sangrur being a part of that State, the provisions of the Ordinance governed the proceedings instituted in the Courts in that District. Section 72 of the Ordinance related to classes of Courts and besides the Judicial Committee, the High Court and the Courts established under any other enactment, the following classes of Civil Courts were established:—

- (a) the Court of the District Judge;
- (b) the Court of the Additional District Judge;
- and
- (c) the Court of the Subordinate Judge.

Section 74 provided that the Raj Pramukh may, in consultation with the High Court and the Public Service Commission, appoint as many persons as he thinks necessary to be District Judges. Section 77 was in the following terms:—

“(1) The Raj Pramukh may in consultation with the High Court:—

- (a) fix the number of Subordinate Judges to be appointed in the Union;

(b) make rules as to the qualifications of persons to be appointed as Subordinate Judges; and

(c) after consultation with the Public Service Commission prepare a list of persons to be appointed as Subordinate Judges and fix their order of seniority.

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order of seniority as contained in that list.”

(2) The High Court shall make appointments in the

According to section 78, the Court of the District Judge was to be the principal Civil Court of original jurisdiction in the district. Section 18 of the Punjab Courts Act, 1918 (to be referred to as the Act) contained a similar classification of the Civil Courts, namely:—

- (1) the Court of the District Judge;
- (2) the Court of the Additional Judge; and
- (3) the Court of the Subordinate Judge.

Section 20 of the Act contained provisions similar to section 74 of the Ordinance; section 21 was almost in the same terms before its amendment by Punjab Act No. 35 of 1963 as section 76 of the Ordinance and section 24 of the Act was the same as section 78 of the Ordinance.

The controversy which has arisen is whether the Court of the Additional District Judge to whom a case is transferred by the District Judge under section 76 of the Ordinance or section 21 of the Act, can try a suit which, according to section 92 of the Code, can be instituted only in the principal Civil Court of original jurisdiction or in any other Court empowered in that behalf by the State Government. The Court of the District Judge being the principal Civil Court of original jurisdiction, the contention of the learned counsel for the appellant is that it is the Court of the District Judge alone where a suit under section 92 of the Code can be instituted. It is pointed out that the Court of the Additional District Judge is neither the principal Civil Court of original jurisdiction nor is it a Court specially empowered by the State Government to try such suits. On the other hand, the position taken up on behalf of the respondents is that although the suit could be instituted only in the Court of the District Judge, that being

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the principal Civil Court of original jurisdiction but under section 76 of the Ordinance, the District Judge could assign to the Additional District Judge any business pending before him and the Additional District Judge could exercise the same powers as the District Judge and discharge his functions in the same manner as the District Judge could. Ex-facie the language of section 76 of the Ordinance or section 21 of the Act is clear enough and hardly any room for doubt is left in the matter of Additional District Judge being competent to discharge all the functions of the District Judge when any business pending before the District Judge is assigned to him by the latter. As has been pointed out in the Bench decision of this Court in *Janak Dulari v. Narain Das* (1), which shall be presently discussed, it has always been understood and the consistent practice has throughout been to the same effect that where the work is heavy, the District Judge can apportion it between himself and the Additional District Judges who can dispose of that work in the same manner and with the same efficacy as the District Judge. In *Diwan Shib Nath v. Alliance Bank of Simla Ltd., and another* (2), a suit had been instituted in the Court of the District Judge, Gujranwala. Mr. Harris was the District Judge and Misra Jawala Sahai was appointed Additional District Judge, Gujranwala. Mr. Harris passed an order transferring that case to Misra Jawala Sahai. An argument was raised before the Punjab Chief Court based on section 75 of the Punjab Courts Act, 1884, that it was necessary for Mr. Harris before transferring the case to Misra Jawala Sahai to assign definite "functions" to him so as to clothe him with power to hear such a case. This contention was based on a decision in *Bidya Moyee v. Surja Kanta* (3). Johnstone and Rattigan JJ. did not accept the Calcutta view and even referred to section 24 of the Code of Civil Procedure under which the District Judge could transfer a suit pending before him to a subordinate Court competent to try it. According to the learned Judges, the Additional District Judge obtained his powers when he was appointed and gazetted and even if to give him jurisdiction, assigning of function by the District Judge was necessary, the order of transfer and direction to try the case would constitute such

(1) 1959 P.L.R. 42.

(2) 3 P.R. 1915.

(3) I.L.R. 32 Cal. 875.

an assignment. The position in this case is distinguishable from the facts of the present case because there was no question before the Chief Court of a suit being triable by the principal Civil Court of original jurisdiction.

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In the Calcutta Court, a view was taken, at one time, that an Additional District Judge, who was not vested with the power of trying suits under section 92 of the Code of Civil Procedure by the Local Government, had no jurisdiction to try such suits and a transfer of such a suit by the District Judge to the Additional District Judge was not competent,—*vide Mahomed Husa v. Abul Hassan Khan* (4), but a Full Bench presided over by Jenkins C.J., in *Rup Kishore Lal v. Neman Bibi* (5) overruled the above decision. It was observed that if it was competent to a District Judge under sub-section (2) of section 8 of the Bengal, N.W.P. and Assam Civil Courts Act, 1887, to assign his functions to an Additional Judge in respect of a class of cases, there was no intelligible reason why he should not do so in respect of a particular case comprised within that class. The Oudh Court also held that by virtue of the provisions contained in section 7 of the Oudh Civil Courts Act, 1879, the District Judge could assign to the Additional District Judge any of the duties connected with the trial of civil suits and he had the power to transfer a suit under section 92 to an Additional District Judge provided the assignment of such suits had been sanctioned in the manner required by law [*see Gauri Nath v. Ram Narain* (6)]. The following observations of Kanhaiya Lal, J.C., may be noticed in that case:—

“The powers conferred by section 24 of the present Code of Civil Procedure are wide enough to empower a District Court to transfer any suit pending before it for trial or disposal to any other Court subordinate to it, provided it is competent to try or dispose of the same. An Additional District Judge is competent to try and dispose of a suit filed under section 92, Civil Procedure Code, if it is transferred to him for

(4) I.L.R. 41 Cal. 866.

(5) I.L.R. 42 Cal. 842.

(6) A.I.R. 1919 Oudh 311.

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disposal by the District Court; because under section 7, Act 13 of 1879, he can exercise in respect of the duties "assigned to him, the same powers as the District Judge. His jurisdiction is co-ordinate with that of the District Court though for the purposes of section 24 he is deemed to be subordinate to the District Court."

It will thus be seen that owing to the provisions contained in the local Courts Acts and section 24 of the Code of Civil Procedure, the Courts never entertained any difficulty in holding that a suit which could be instituted or which was triable only by the Court of the District Judge, that being the principal Civil Court of original jurisdiction, could be assigned or transferred by him for disposal to the Additional District Judge by virtue of the provisions analogous to those contained in section 76 of the Ordinance or Section 21 of the Act. The difficulty only arose after the decision of their Lordships in *Kuldip Singh v. The State of Punjab* (7), the ratio of which was understood by a Division Bench of this Court in *Janak Dulari's* case to mean that where a suit is entertainable by the principal Civil Court of original jurisdiction, which is the Court of the District Judge alone, it could not be tried or disposed of by the Additional District Judge even when it was transferred by the District Judge to the Court of the Additional District Judge. It is, therefore, necessary to closely examine the decision of the Supreme Court. In that case the second respondent, Amar Singh, had filed a civil suit against the appellant for recovery of a large sum of money on the basis of mortgage in the Court of Mr. E. F. Barlow, a Subordinate Judge of the First Class. The appellant had filed a receipt which purported to show that Rs. 35,000 had been paid towards satisfaction of the mortgage and in the witness box he swore that he had paid the money and had been given the receipt. Mr. Barlow did not accept the receipt to be genuine and rejected the appellant's case. He passed a preliminary decree against the appellant for the full amount of the claim which was followed by a final decree. There was an appeal to the High Court but the appeal was dismissed. The High Court also held that the receipt was a suspicious document. The plaintiff then

(7) A.I.R. 1956 S.C. 391.

made an application in the Court of Mr. W. Augustine, the successor of Mr. Barlow, asking him to file a complaint under sections 193 and 471 of the Penal Code. Mr. Augustine was transferred before any order could be made and only a Subordinate Judge of the fourth Class was appointed in that area. He made a report to the District Judge that he was not competent to deal with the application which had been filed by the plaintiff for criminal prosecution of the defendant. The District Judge transferred the matter to the Senior Sub-Judge and that officer decided to file a complaint. The appellant then filed an appeal against the order of Mr. Pritam Singh, the Senior Sub-Judge, to the Additional District Judge, Mr. J. N. Kapur, who held that Mr. Pitam Singh had no jurisdiction to file the complaint because he was not Mr. Barlow's successor. He also found that there was no *prima facie* case on the merits. On revision the High Court held that the Senior Sub-Judge had jurisdiction and that the material disclosed a *prima facie* case. The order of the Additional District Judge was set aside and that of Mr. Pritam Singh, the Senior Sub-Judge, was restored. Then the matter was taken to their Lordships and it is stated in the judgment that three questions were raised for their Lordships' decision. The first concerned the jurisdiction of the Senior Sub-Judge, Mr. Pritam Singh, to entertain the application and make the complaint. The second was whether the Additional District Judge had jurisdiction to entertain an appeal against Mr. Pitam Singh's order. The third was whether the High Court had power to reverse the Additional District Judge's order in revision. After an examination of the relevant provisions of the Act, it was held on the first point that Mr. Pitam Singh Senior Sub-Judge, had no jurisdiction to make a complaint either as the original Court which tried the suit or as the appellate authority under section 476-B of the Code of Criminal Procedure. It was observed that the original Court (of Mr. Barlow) had made no complaint; section 476-A, Criminal Procedure Code, was, therefore, attracted and the jurisdiction to make the complaint was transferred to the Court to which Mr. Barlow's Court was subordinate within the meaning of section 195 of the Code of Criminal Procedure. That Court, in their Lordships' opinion, was the Court of the District Judge. When the matter was reported to the District Judge by Mr. Gujral, the Subordinate Judge 4th Class, he had authority under section 476-A

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of the Code of Criminal Procedure either to make the complaint himself or to reject the application. He did neither. He sent it to Mr. Pitam Singh, who had no jurisdiction. Since the order of Mr. Pitam Singh was without jurisdiction, that still left the District Court free to act under section 476-A when the matter came back to it again. According to their Lordships this time it came by way of appeal from Mr. Pitam Singh's order but that made no difference because the substance of the matter was that the original Court had not taken any action, therefore, it was incumbent on the District Judge to make an appropriate order either under section 476-A or by sending it for disposal to the only other Court that had jurisdiction, namely, the original Court. But the District Judge did not deal with it. The application went instead to the Additional District Judge and what had to be seen was whether the Additional District Judge had the requisite power and authority. That would depend on whether the Additional District Judge was a Judge of the District Court or whether he formed a separate Court of his own like the various Subordinate Judges. After referring to section 18 of the Act and the relevant Articles of the Constitution, their Lordships observed that the Act nowhere speaks of an Additional District Judge or of an Additional Judge to the District Court. The Additional Judge is, therefore, not a Judge of coordinate judicial authority with the District Judge. Reference was then made to section 21 of the Act and it was observed:—

“* * * * *

but these powers are limited to the cases with which he is entitled to deal. Thus, if his functions are confined to the hearing of appeals, he cannot exercise original jurisdiction and *vice versa*. But if he is invested with the functions of an appellate tribunal at the District Court level then he can exercise all the powers of the District Judge in dealing with appeals which the District Judge is competent to entertain.

This is a very different thing from the administrative distribution of work among the Judges of a single Court entitled to divide itself into sections and sit as division Courts.”

It was consequently held that the Court of the Additional District Judge is not a division Court to the Court of the District Judge but a separate and distinct Court of its own. For these reasons the order of Mr. J. N. Kapur was held to be without jurisdiction. On the third point it was held that the High Court had no jurisdiction to make the complaint of its own authority. It could have only sent the case to the District Judge for disposal according to law. It is noteworthy that in *Kuldip Singh's case* the original Court having made no complaint under section 476-A of the Code of Criminal Procedure, it was only the District Judge who could file a complaint under that provision. It is not clear how the matter under section 476-A went to the Additional District Judge; presumably it went to his Court because the appeal against the order of the Senior Sub-Judge, Mr. Pitam Singh, was taken there, as is stated in paragraph 4 of the report, but it was definitely held that the Additional District Judge could not exercise original jurisdiction if his functions were confined to the hearing of appeals with reference to section 21 of the Act. The crux of the matter, therefore, was that an appeal had been taken to the Court of the Additional District Judge against the order of the Senior Sub-Judge directing a complaint to be filed and while disposing of that appeal, the Additional District Judge purported to exercise original jurisdiction which the District Judge alone could exercise, i.e., decide whether a complaint should be filed in that case under section 476-A or not. It is, however, quite clear from the observations of their Lordships in paragraph 37 of the report that the power of Additional Judge is limited to cases to the hearing of which his functions are confined. It would necessarily follow that if any business is pending before the District Judge, he can assign the same to the Additional District Judge and if he does so, there could be no difficulty in holding that the Additional District Judge could discharge all the functions of the District Judge. It is not possible to see how a suit which has been duly instituted in the Court of the District Judge under section 92 of the Code, as in the present case, does not form a part of the business pending before him and if he assigns the disposal of that business to the Additional District Judge, the latter would be fully empowered to deal with it and dispose it of even in the light of what has been laid down by the Supreme Court.

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In *Janak Dulari's case*, the questions were whether the Court of the Additional District Judge could be considered to be the principal Civil Court of original jurisdiction within section 19 of the Hindu Marriage Act and if not, whether the District Judge could transfer such a case to the Court of the Additional District Judge. After referring to the decision of the Supreme Court in detail, Falshaw, J. (as he then was) felt bound to hold that the Court of the Additional District Judge could not be considered to be the principal Civil Court of original jurisdiction within section 19 of the Hindu Marriage Act and, therefore, a District Judge to whom a petition under that Act was presented could not transfer it to an Additional District Judge. The correctness of the Bench decision has been canvassed before us by the learned counsel for the respondents and it has been submitted that the true factual position and the basis on which the observations were made in *Kuldip Singh's case* by the Supreme Court were not appreciated by the Bench in *Janak Dulari's case*. Our attention has been invited to a Bench decision in *Ajit Kumar Bhunia v. Shrimati Kanan Bala Devi* (8), dissenting from the view expressed in *Janak Dulari's case*. There also the question arose under section 19 of the Hindu Marriage Act, a petition under section 13 for dissolution of marriage having been transferred by the District Judge to the Court of the Additional District Judge, Midnapore, for disposal. The provisions of the Bengal, Agra and Assam Civil Courts Act, 1887 (to be called the Bengal Act) were similar to the provisions contained in the Act. Section 3 is equivalent to section 18 of the Act. Section 4 relates to appointment of District Judges. Section 8 is almost in the same terms as section 21 of the Act. P. N. Mookerjee J. delivering the judgment of the Bench, referred to decisions of other High Courts including those of Allahabad (*Mutsaddi Lal v. Mule Mal* (9), and *Makhan Lal v. Sri Lal* (10), as also of Patna (*Inderdeo Ojha v. Emperor* (11), in which it had been held that the Additional District Judge has, on transfer or assignment of a particular case to him by the District Judge, all the powers and authority and jurisdiction of the District Judge himself. The question was whether this settled law had been unsettled or deemed to have become unsettled by reason of

(8) A.I.R. 1960 Cal. 565.

(9) I.L.R. 34 All. 205.

(10) I.L.R. 34 All. 382.

(11) A.I.R. 1945 Pat. 322.

the Supreme Court decision in *Kuldip Singh's case*. It was not disputed in the Calcutta Court that under section 8(2) of the Bengal Act and section 24 of the Code of Civil Procedure the District Judge had the power to transfer or assign cases pending before him to an Additional District Judge provided the latter was a competent Court for the purpose. It was held that according to the notifications the Additional District Judge of Midnapore was an Additional Judge within the meaning of section 8 of the Bengal Act and if that was so, he was competent to deal with the case on transfer (assignment) of the same to him under section 8(2) by the District Judge provided the Hindu Marriage Act under which the said suit was instituted contained nothing against such transfer either expressly or by necessary implication. The learned Calcutta Judges sought to make a distinction between the requirement relating to institution of a suit and its subsequent trial and according to them, the only effect of section 19 of the Hindu Marriage Act was that an application under it had to be presented to the Court of the District Judge, but the Supreme Court decision did not restrict or even purport to restrict the District Judge's power to transfer pending proceedings to Additional Judges, that is, to Additional District Judges, under section 8(2) of the Bengal Act or the corresponding provisions of sister enactments. The following observations of P. N. Mookerjee J. may be referred to with advantage in this connection:—

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“As a matter of fact the Supreme Court itself expressly adverted to this power of transfer and affirmed the same. But it was of no avail in the particular case before their Lordships as there the presentation itself of the particular appeal was to the learned Additional District Judge and not to the learned District Judge. The Additional District Judge was certainly not competent to receive the appeal, there being no delegation or transfer (assignment) of that function to him by the learned District Judge under the relevant section of the particular statute before the Court, namely, section 21(2) of the Punjab Courts Act (Act VI of 1918), and, accordingly, he had no jurisdiction in the matter.”

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Where the presentation had been duly made to the District Judge, no question can arise of the application or suit not having been filed or instituted in the principal Civil Court of original jurisdiction. The Calcutta Court itself proceeded on the basis or the assumption that in the Supreme Court case the presentation of the appeal was in the Court of the Additional District Judge and had not come to him by transfer under orders of the District Judge. Dealing with section 24, P.N. Mookerjee, J. said that section 24 of the Code postulates transfer to a competent Court, "such competency to be found in and by virtue of some other statutory provision, notification or otherwise," Section 8(2) of the Bengal Act is, however, differently worded and, under it, the necessary authority or competency, in the absence of anything to the contrary in the nature of the particular proceeding or in the particular statute, under which the same has been taken, is inherent in the assignment itself and the mere assignment carries with it the necessary competency or authority provided, of course, that the transferee Judge is an Additional Judge. Reliance on section 24 cannot, therefore, solve the problem.

The learned counsel for the appellant has questioned the correctness of the view taken by the Calcutta Court in *Ajit Kumar Bhunia's case* that the requirement of the statute either under the Hindu Marriage Act or section 92 of the Code is confined to the presentation or institution of a suit and not to its subsequent trial or disposal. It is urged, and with a certain measure of force, that when the Legislature makes it obligatory that a particular cause or action can be instituted only in the principal Civil Court of original jurisdiction, it is intended that it should be tried and disposed of by that Court. With the utmost respect to the learned Calcutta Judges, it seems to me that that distinction which they have sought to make in the manner indicated before cannot be supported in its entirety on principle or authority. It is obvious that when the Legislature is making a special provision of such a nature, it has in mind the importance of the cause or action to be tried and that is why jurisdiction is conferred only on particular Courts and in the instant case on the Court of the District Judge which alone indisputably is the principal Civil Court of original jurisdiction. It is difficult to accede to the view that the mere formality of institution or presentation of an application or suit was all that was meant or

intended by the Legislature. In such cases if the object is that a particular cause or matter is of such importance that it should be decided only by the Court of the District Judge, the Legislature could never have left it to a bare formality of presenting the application or suit before him leaving the trial and final disposal to a Court which may not have the same status as the Court of the District Judge. There is ample justification for saying that under section 92 of the Code of Civil Procedure it is not only the institution of the suit, but its subsequent trial and disposal also which must take place in the Court of the District Judge, and if the matter had stood there, the District Judge alone would be competent to try and dispose it of. But there is no reason for not giving full effect to the provisions contained in section 76 of the Ordinance or section 21 of the Act under which the District Judge can assign a part of the business pending before him to the Additional District Judge and when he does so, the latter can exercise the same powers and functions which the District Judge can. It is true that in view of the provisions contained in section 92 of the Code and section 21 of the Act or section 76 of the Ordinance the suit must be instituted in the Court of the District Judge, but there is no bar or prohibition against the exercise of his powers of assigning the business to the Additional District Judge, and once such suits are assigned to him, he would be as competent to deal with it as the District Judge.

In the view which I have expressed, I have ventured to differ, with the utmost respect, from the Bench decision in *Janak Dulari's case* because to my mind the facts in *Kuldip Singh's case* were substantially different and the question in the form in which it has come up for consideration in the present case was not decided by their Lordships. The learned Calcutta Judges owing to the statements contained in the Supreme Court judgment had no doubt that the appeal in *Kuldip Singh's case* against the order of Mr. Pitam Singh, the Senior Sub-Judge, directing a complaint to be filed had been taken directly to the Court of the Additional District Judge, Mr. J. N. Kapur, which meant that it had not been transferred for disposal by the District Judge to his Court. Although such an impression is created from what is stated in their Lordships' judgment, but it may be pointed out that the invariable practice,

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which is followed in District Courts here, is that appeals are always presented in the District Court and under general orders of transfer they are assigned to various Additional Judges except those which are kept for disposal by the District Judge himself. However, in that case the true position was that the District Judge had assigned to the Additional District Judge the business of disposing of appeals and had not assigned to him the task or business of deciding the question whether a complaint should be filed in exercise of the powers which are conferred on the District Judge alone under section 476-A of the Code of Criminal Procedure.

These matters do not appear to have engaged the attention of the Bench deciding *Janak Dulari's case*. The learned counsel for the appellant has relied largely on the decision in *Janak Dulari's case* as also the observations of the Supreme Court to which reference has been made *in extenso*, apart from the view expressed in both these decisions that the Court of the Additional District Judge is a distinct and separate Court from that of the District Judge and, therefore, it is not open to the latter to assign the business of disposing of suits which can be disposed of by him alone as principal civil Court of original jurisdiction. This argument has been fully examined by me and I am unable to accept it for the reasons which I have already stated. I find it difficult to give any narrow or restricted meaning to the word "business" appearing in section 76 of the Ordinance or section 21 of the Act and I entertain no doubt whatsoever that it would include all the work which is pending before the District Judge. When a suit under section 92 of the Code is instituted in his Court it becomes a part of the business pending before him, with the result that it can be assigned by him to the Additional District Judge under section 21(2) of the Act and in that event the latter would be fully competent to deal with and dispose of the suit in the same manner as the District Judge. I would, therefore, answer the question referred to the Full Bench in the negative.

Dulat, J.

S. S. DULAT, J.—I agree.

Khanna, J.

H. R. KHANNA, J.—I agree.

B.R.T.