

Dr. Harmindar  
Singh  
v.  
Dr. Balbir  
Singh  
and others

principle of effectiveness prevails and jurisdiction will not be exercised". Private International Law by Cheshire, Third Edition, page 141).

Tek Chand, J. There is thus no force in the argument of Shri Chiranjiva Lal Aggarwal, Advocate resting on the principle of submission.

In view of what has been stated above, the appeal fails and is dismissed, In the circumstances of the case there will be no order as to costs of this appeal in this Court.

Passey, J.

PASSEY, J.—I agree.

REVISIONAL CIVIL

Before Bhandari, C.J.

S. MOHINDER SINGH THIND,—*Petitioner.*

*versus*

SHRI KANWAL SHARAN KALIA,—*Respondent*

**Civil Revision 381 of 1956.**

1957

Jan., 18th

*Jurisdiction—Civil Court—Order passed by a Criminal Court under section 514 Criminal Procedure Code—Civil Court whether has the jurisdiction to interfere with the same under section 115 Civil Procedure Code*

*Held*, that the power to determine whether a bond should or should not be forfeited vests only in a criminal Court. A Civil Court has no power to intrude on the functions specifically entrusted to another Court. If the criminal Court who has power to order the forfeiture of a bond has exercised the powers conferred upon it, it is open to the person aggrieved by the order to seek redress at the hands of a superior criminal Court. He cannot secure the intervention of a civil Court, for civil Court has no power to pronounce upon the propriety of an order passed under section 514 of the Code of Criminal Procedure.

*Petition under section 115 Civil Procedure Code, for revision of the order of Shri Ishar Singh, Sub-Judge 1st Class, Ludhiana, dated 4th June, 1956, ordering that the temporary injunction granted shall stand vacated.*

H. S. DOABIA, for Petitioners.

A. N. GROVER, B. R. TULI, and L. D. KAUSHAL, for Respondents.

### JUDGMENT

BHANDARI, C.J.—This petition under section 115 Bhandari C.J. of the Code of Civil Procedure raises the question whether it is within the competence of a Civil Court to interfere with an order passed by a criminal Court in exercise of the powers conferred on it by section 514 of the Code of Criminal Procedure.

The petitioner in this case is one Mohinder Singh, Director of the Rural Supply Company, Ludhiana, while the respondents are the Punjab State, Kanwal Sharan Kalia, the New Bank of India and Hari Chand.

On the 6th January, 1946, the Police took into possession 57 items of property belonging to Mohinder Singh petitioner who was being prosecuted for a contravention of the Defence of India Rules. The articles were entrusted to the custody of one Kanwal Sharan Kalia, who executed a bond undertaking to produce the goods in Court when required so to do, or in default to pay a sum of Rs. 5,000 by way of penalty.

The petitioner was acquitted on the 30th December, 1948, and asked for the return of the articles belonging to him. On the 27th December, 1954, he presented a formal application for the restoration of the goods which were entrusted to

S. Mohinder Singh Thind v. Shri Kanwal Sharan Kalia

Bhandari, C. J. Kalia admitted that the goods in question were entrusted to him under a *sapurdnama* but he denied his personal liability for their production as he had taken those articles in his capacity as an employee of the New Bank of India. He explained that Hari Chand defendant had obtained a decree against the Rural Supply Company, that he secured the attachment of the goods belonging to the petitioner which were lying with the New Bank of India and that these goods were sold in the execution of the said decree. The District Magistrate came to the conclusion that Kalia received the goods in his personal capacity and not in his capacity as an employ e of the Bank, that he had failed to account for the property entrusted to him and consequently that he was personally liable to pay a sum of Rs. 5,000 in accordance with the terms of the bond executed by him. He was accordingly directed to produce the property in Court or in default to pay a sum of Rs. 5,000 as stipulated by him. The learned Sessions Judge upheld the order of the District Magistrate and dismissed the appeal. In the course of his order the learned Sessions Judge made certain observations which have given rise to this petition. He stated as follows:—

“It will, however, be open to him to contest, in a civil Court, that the New Bank of India Limited alone was liable on account of certain express or implied agreement between him and the Bank. I also find on the basis of the unsatisfactory statements of the appellant, that, on the face of it, it has not been proved that the property entrusted to the appellant was identical with the property sold in execution of the civil

Court decree or that the sale proceeds had been duly accounted for, and the appellant is absolved from all liability. However, in view of the intricate questions involved, as noticed above, I permit the appellant to seek any remedy open to him, in a Civil Court, within three months of this order. Subject to the filing of any suit in a Civil Court by the appellant and obtaining a stay order for realisation of the money, the appeal stands dismissed, and the appellant would continue to be liable for the sum of Rs. 5,000 as penalty on account of his failure to produce the goods entrusted to him under Exhibit P. 7. Subject to these remarks the appeal fails and is accordingly dismissed."

S. Mohinder  
Singh Thind  
v.  
Shri Kanwal  
Sharan Kalia  
Bhandari, C. J.

Taking advantage of these observations Kalia brought a suit against the Punjab State, Mohinder Singh, Rural Supply Company, the New Bank of India and Hari Chand for a declaration that he was not liable to account for the goods which were entrusted to him or to pay a penalty of Rs. 5,000. He reiterated the plea put forward in the earlier litigation that the liability for restoration of the goods or the payment of the penalty devolved on the New Bank of India under whom he was then employed and who took possession of the property immediately after the bond had been executed. He stated further that the goods in question were sold in the execution of the decree obtained by Hari Chand. He accordingly prayed for a declaration that he was not liable to restore the property in Court or to pay the penalty which was being demanded of him. The defendants objected to the jurisdiction of the Civil Court to hear and determine the matters in controversy bet-

S. Mohinder Singh Thind v. Shri Kanwal Sharan Kalia

w. ween the parties, but their objection was over-ruled and Mohinder Singh has come to this Court in revision.

Shri Kanwal Sharan Kalia  
Bhandari, C. J. Mr. Gorver, who appears for Kalia, has placed two submissions before me. It is contended in the first place that a Civil Court being a Court of general jurisdiction is at liberty to decide the questions which are being agitated in the present case; and secondly that the Sessions Judge himself has expressed the view that questions concerning the identity and disposal of the property are intricate questions of law which ought more appropriately to be decided by a Civil Court.

Both these contentions appear to me to be wholly devoid of force. Under a constitutional form of Government a Court is a creature of the law and exercises such jurisdiction as may be conferred upon it by the Constitution or the Legislature by which it has been ordained or established. It exercises all the inherent powers which of right belong to all Courts, such additional powers as may be conferred by the statutes and the laws, and such other incidental powers as are necessary to enable it to discharge its duties. Section 9 of the Code of Civil Procedure provides that Civil Courts have jurisdiction to try all suits of a civil nature excepting suits of which their cognizance is either expressly or impliedly barred. In one sense a Civil Court is a tribunal of general jurisdiction, in another a tribunal of special or limited jurisdiction. It is a court of general jurisdiction, or it has power to try all cases of a civil nature unless its jurisdiction is expressly or impliedly barred by a special or local law. It is a Court of special and limited jurisdiction, for it has no power to deal

with cases where powers of a judicial nature are expressly or impliedly lodged elsewhere. It can exercise only the power with which it has been specifically clothed. It must take notice of the limits of its own authority and return for presentation to the appropriate Court any plaint presented to it when the pleadings indicate that the case belongs to a class over which it has no jurisdiction. This action should be taken whether any objection has or has not been raised, for in such a case it has no power to embark on an enquiry or to hear and determine the matters in controversy between the parties.

S. Mohinder  
Singh Thind  
v.  
Shri Kanwal  
Sharan Kalia  
Bhandari, C.J.

Jurisdiction in regard to forfeiture of bonds vests exclusively in a criminal Court, for section 514 of the Code of Criminal Procedure provides that whenever it is proved to the satisfaction of the Court by which a bond under the said Code has been taken that such bond has been forfeited, the Court shall record the grounds of such proof, and may call upon any person bound by such bond to pay the penalty thereof, or to show cause why it should not be paid. The language of this section makes it quite clear that the power to determine whether a bond should or should not be forfeited vests only in a criminal Court. A civil Court has no power to intrude on the functions specifically entrusted to another Court. If the criminal Court who has power to order the forfeiture of a bond has exercised the powers conferred upon it, it is open to the person aggrieved by the order to seek redress at the hands of a superior criminal Court. He cannot secure the intervention of a civil Court, for a civil Court has no power to pronounce upon the propriety of an order passed under section 514 of the Code of Criminal Procedure. It may perhaps be stated by way of analogy that where by an act of

S. Mohinder Singh Thind v. Shri Kanwal Sharan Kalia  
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 Bhandari, C. J.

Legislature powers are given to any person for a public purpose from which an individual may receive injury if the mode of redressing the injury is pointed out by the statute the ordinary jurisdiction of civil Courts is ousted and in the case of injury the party cannot proceed by action, *Ram Chandra v. The Secretary of State for India in Council* (1).

Nor is there any substance in the contention that the Civil Court acquired jurisdiction to hear and determine the present case as the learned Sessions Judge had permitted the plaintiff to seek such remedy as was available to him under the law. Only the Constitution or the laws can confer jurisdiction over a Court of Law. Neither an individual, nor a Court, nor even an invalid statute can confer such jurisdiction. The learned Sessions Judge stated quite clearly that there was nothing on the record to indicate that Kalia was acting on behalf of the Bank or that he had handed over the property to the Bank or that the liability incurred by him was the liability of the Bank. It was for this reason that the learned Sessions Judge upheld the order of the District Magistrate and dismissed the appeal preferred by Kalia, the only concession that he was prepared to allow Kalia was that if the latter was able to establish in a Court of law that he had received these goods not in his personal capacity but as an agent of the New Bank of India he would be at liberty to obtain an appropriate declaration from a civil Court. The learned Sessions Judge merely allowed Kalia to obtain a declaration whether there was any agreement between him and the New Bank, that the Bank and not Kalia would be liable to pay the penalty mentioned in the bond. The position as I see it is as follows. The Court came to the conclusion that certain goods had

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(1) I.L.R. (1889) 12 Mad. 105.

been entrusted to Kalia, that he had failed to account for these goods and that he was liable to pay a sum of Rs. 5,000 in accordance with the terms of the bond. In view of the plea put forward by Kalia that he was acting not in his personal capacity but in his capacity as an agent of the New Bank of India the learned Sessions Judge allowed him, if he was so advised, to bring a suit with the object of securing a determination of his rights *qua* the said Bank. *Prima facie* he is at liberty to bring a suit against the New Bank of India either for reimbursement or for specific performance of the contract, if any, between himself and the Bank. He has no power, however, to bring a suit either against the Punjab State or against Mohinder Singh or the Rural Supply Company for securing a declaration that the criminal Court was not justified in forfeiting the bond.

S. Mohinder  
Singh Thind  
v.  
Shri Kanwal  
Sharan Kalia  
Bhandari, C. J.

For these reasons I would accept the petition and declare that Kalia is not at liberty to maintain the present suit against the Punjab State, Mohinder Singh and the Rural Supply Company. Their names should be omitted from the list of defendants. I would order accordingly. There will be no order as to costs.

The parties have been directed to appear before the trial Court on the 19th February, 1957.

#### FULL BENCH

*Before Khosla, Passey and Mehar Singh, JJ.*

DIVISIONAL SUPERINTENDENT NORTHERN RAILWAY, DELHI DIVISION,— *Petitioner*

*versus*

MUKAND LAL,— *Respondent*

Civil Revision No. 96 of 1955.

*Payment of Wages Act (IV of 1936)—Sections 7 and 15—Railway employee placed under suspension in accordance with the rules by which his conditions of service*

1957

Jan., 18th