

a town a warrant under section 5 must necessarily be issued to him for execution, and that Assistant Sub-Inspectors only come into the picture where there are no senior officers in a town. The argument appears to have been that the intention of the Notification clearly was that warrants under section 5 were to be executed by an officer of the highest rank available in any particular town, but if that was indeed the intention I fail to understand why it was not more clearly stated. As the Notification stands the plain meaning appears to me to be that in a town where there are both Sub-Inspectors and Assistant Sub-Inspectors the Superintendent of Police can issue a warrant to either of these officers for execution, and I therefore consider that the learned Additional District Magistrate and the learned Sessions Judge whose view he followed were wrong in their interpretation. I would accordingly accept the appeal of the State and restore the conviction of Pars Ram under section 3 of the Public Gambling Act and also the sentence imposed on him of a fine of Rs. 30 or in default two weeks' rigorous imprisonment. He must accordingly surrender to his bail bond, which will be cancelled if the fine is paid, otherwise he must be sent to prison to serve the sentence in default.

KHOSLA, J.,—I agree.

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v.
Paras Ram
alias Parsa,

Falshaw, J.

Khosla, J.

REVISIONAL CIVIL

Before Bhandari, C.J.

THE FRONTIER BANK, LTD., PAHARGANJ, NEW
DELHI,—Petitioner

versus

SHRIMATI PRAKASH WATI BAHL,—Respondent

Civil Revision No. 789 of 1953

Code of Civil Procedure (Act V of 1908)—Section 20—
Cause of action arising outside the territories of India—
Courts in India, whether competent to entertain the suit
based thereon—Jurisdiction—Objection as to, raised—
Duty of Court.

1954

August, 18th

The plaintiff deposited some amount with the defendant bank at Dera Ismail Khan in West Punjab in 1946. When the communal disturbances broke out in 1947, she asked the bank to transfer her account to New Delhi. The bank failed to comply with her wishes and she filed a suit for the recovery of the amount at Delhi where the bank was carrying on its business and it was admitted that there was no subordinate office at Dera Ismail Khan. The bank objected to the jurisdiction of Delhi Court to entertain the suit.

Held, that Delhi Courts had jurisdiction to entertain the suit because the bank was carrying on business at Delhi and there was no subordinate office of the bank at Dera Ismail Khan. The power to determine the place at which a particular class of actions should be tried vests exclusively in the Legislature, or, in other words, the right or privilege of resorting to the Courts of one country for the enforcement of a cause of action arising in another country depends upon the municipal law of the country where the suit is brought. Sections 15 to 20 of the Code of Civil Procedure regulate the forum for the institution of suits in this country and, as provided in section 20 of the Code, (1) a Court has jurisdiction to entertain a suit if the cause of action arises within the local limits of the jurisdiction of the Court, even if the defendant does not reside within such limits, and (2), a Court has jurisdiction to entertain a suit if the defendant carries on business within its jurisdiction even if the cause of action arises elsewhere.

Held, that when a question of jurisdiction is raised in a Court of law it is the duty of the Court to decide whether the plaintiff was at liberty to institute the case in the Court in which it was actually instituted. It is not the duty of the Court to determine finally and for good the rights of the parties in the subject-matter of the main suit.

Petition under section 44 of Act IX of 1919, Punjab Courts Act and Section 115. C.P.C., for revision of order of Shri Chetan Das Jain, Subordinate Judge, 1st Class, Delhi, dated 26th February, 1952, holding that this Court has jurisdiction to try the suit.

VEDA VYASA and S. K. KAPUR, for Petitioner.

D. K. KAPUR, for Respondents.

JUDGMENT.

Bhandari, C. J. BHANDARI, C. J. This petition raises the question whether it is within the competence of a person to resort to the Courts in this country for the enforcement of a cause of action which has arisen outside the territories of India.

The facts of the case are simple and not seriously in dispute. On the 19th September, 1946, Shrimati Prakash Wati Bahl deposited a sum of Rs. 2,050 with the Frontier Bank at Dera Ismail Khan, a limited concern with its headquarters at Dera Ismail Khan. When the communal disturbances broke out in the year 1947, she asked the Bank to transfer her account to New Delhi. The Bank failed to comply with her wishes and on the 10th January, 1950, she brought the present suit for the recovery of a sum of Rs. 4,100 against the Frontier Bank at Delhi. The Bank promptly objected to the jurisdiction of the Courts at Delhi to deal with the case and the Court accordingly framed the following three issues, namely:—

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- (1) whether there is no cause of action accruing to the plaintiff against the defendant?
- (2) whether the suit against the defendant does not lie because the defendant is under a scheme of arrangement? and
- (3) whether the Court has jurisdiction to try the suit?

All the issues were decided in favour of the plaintiff, the first two because they were not pressed by the Bank and the third because the Court came to the conclusion that the Bank was carrying on business within the local limits of the Courts at Delhi.

The one and only point for decision, which has been somewhat obscured by the raising of a number of subsidiary issues, is whether the present case can be heard and decided by a Court at Delhi.

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Under the English common law a suit could be brought only at the place where the cause of action arose but in course of time the law came to recognise a distinction between local and transitory actions. If the cause of action can arise only at one place it is said to be local and the action must be brought only where the cause of action arose. Thus suits for the possession of land can be brought only at the place where the land is situate. If the cause of action can arise in any place whatsoever it is said to be transitory and the suit can be brought wherever the defendant can be found. Thus suits for the payment of damages for breach of contract or tort can be brought wherever the defendant happens to be at the time of the service of the process. Rule 27 of Dicey's Conflict of Laws declares that when the defendant in an action *in personam* is, at the time for the service of the writ, in England, the Court has jurisdiction in respect of any cause of action, in whatever country such cause of action arises.

Broadly speaking, the power to determine the place at which a particular class of actions should be tried vests exclusively in the Legislature. To put in a slightly different language, the right or privilege of resorting to the Courts of one country for the enforcement of a cause of action arising in another country depends upon the municipal law of the country where the suit is brought (*Chunnilal Kasturchand v. Dundappa Damappa* (1)). Sections 15 to 20 of the Code of Civil Procedure regulate the forum for the institution of suits in this country. Sections 16 to 18 deal with suits relating to immovable property and suits relating to mixed actions, section 19 deals with suits for compensation for wrongs to persons or movables, and section 20 with other

(1) A.I.R. 1951 Bom. 190

suits. Section 20 declares in unambiguous language that every suit shall be instituted in a Court within the local limits of whose jurisdiction either the defendant voluntarily resides or carries on business or works for gain or within the jurisdiction of a Court within the local limits of which the cause of action, wholly or in part, arises. The legal consequences which flow from these provisions are—(1) that a Court has jurisdiction to entertain a suit if the cause of action arises within the local limits of the jurisdiction of the Court, even if the defendant does not reside within such limits; and (2) that a Court has jurisdiction to entertain a suit if the defendant carries on business within its jurisdiction even if the cause of action arises outside it. In *Haveli Shah v. Khan Sahib Shaikh Painsa Khan* (1), it was held that where the cause of action against the defendant residing in the Punjab arose in Persia but the defendant carried on business at Quetta he can be sued in respect of such cause of action in Quetta. (See also the cases collected under Note 8 to section 20 of Chitaley's Commentary on the Code of Civil Procedure.)

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As the cause of action in the present case arose admittedly in Pakistan, a Court in Delhi can entertain this suit only if the Bank carries on business within its jurisdiction. Explanation II to section 20 of the Code of Civil Procedure declares that a Corporation shall be deemed to carry on business at its sole or principal office in the States, or in respect of any cause of action arising at any place where it has also a subordinate office at such place. This explanation makes it quite clear that a corporation shall be deemed to carry on its business at its sole or principal office in India but that if a cause of

(1) A.I.R. 1926 P. C. 88, 89

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action arises at any place where the company has its "subordinate office" that place should be deemed in respect of such cause of action to be the place where the company carries on business. Shri Thakar Das, General Manager of the Bank, has stated on oath that the New Delhi office of the Bank is their sole office in India. It is also in evidence that there is no "subordinate office" of the Bank at Dera Ismail Khan where the cause of action arose. This being so, the trial Court was in my opinion fully justified in holding that the Bank is carrying on business at Delhi and consequently that it is within the competence of the civil Courts at Delhi to hear and to dispose of the case.

The learned Counsel for the Bank invites my attention to a passage at page 307 of Dicey's Conflict of Laws where the learned author observes that a Bank deposit is situate where the branch of deposit is, because, although the Bank may be suable elsewhere, for example where its head office is, a demand must first be made at the branch where the account is kept before action lies. *Clare and Co. v. Dresdner Bank* (1), has also been cited. In this case the plaintiffs had an account at the Berlin branch of the defendant, which had its head office in Germany and a branch in London. They wrote to the London branch demanding payment of the balance due on the account at the Berlin branch, and upon refusal to pay sued the bank without having made any request in Berlin to pay or to remit the balance to London. The court held that the plaintiffs were not entitled to demand payment from the London branch and that there had not been any breach by the defendant bank of any obligation to the plaintiffs. Again, a reference

(1) (1915) 2 K.B. 576

has been made to certain authorities in support of the proposition that the law which governs a contract depends upon the intention of the parties (*State Aided Bank of Travancore, Ltd.*, v. *Dhrit Ram* (1), and *In re Dass Bank, Ltd.* (2)). These authorities are in my opinion hopelessly beside the point for the question which requires determination is not whether the law of India or the law of Pakistan is applicable to the subject-matter of the main suit but whether the jurisdiction of the Courts in this country is regulated by the provisions of sections 15 to 20 of the Code of Civil Procedure and if so whether the Courts at Delhi have jurisdiction to entertain this suit. When a question of jurisdiction is raised in a Court of law it is the duty of the Court to decide whether the plaintiff was at liberty to institute the case in the Court in which it was actually instituted. It is not the duty of the Court to determine finally and for good the rights of the parties in the subject-matter of the main suit.

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As the plaintiff in the present case has discharged the burden which rested on her of proving that she has a right to maintain the suit in a Court at Delhi and as the Bank has failed to oust the Court of jurisdiction the only order that need be passed is that the petition be dismissed with costs. I would order accordingly.

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Before Khosla and Kapur, JJ.

MESSRS. BRITISH MEDICAL STORES AND OTHERS;—Petitioners
versus

L. BHAGIRATH MAL AND OTHERS,—Respondents

Civil Revision No. 243 of 1951

Delhi and Ajmer-Merwara Rent Control Act (XIX of 1947)—Section 7-A and Schedule IV—Whether ultra vires the Constitution of India—Power of Rent Controller to August 26

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(1) A.I.R. 1942 P.C. 6

(2) 57 C.W.N. 526.