

APPELLATE CIVIL.

Before Sir Basil Scott, Kt., Chief Justice, and Mr. Justice Batchelor.

1909.
July 22.

BHAGAVANDAS DHARAMSI (ORIGINAL PLAINTIFF), APPLICANT, v.
A. BESSE FRENCHMAN (ORIGINAL DEFENDANT), OPPONENT.*

Aden Courts Act (II of 1864), sections 8 and 9†—Presidency Small Cause Courts Act (XV of 1882), section 69—Resident's Court—Application to state a case to the High Court—Application unconditional before delivery of judgment.

A party requiring a case to be stated by the Resident at Aden to the High Court of Bombay, under section 8 of the Aden Courts Act (II of 1864) should make an unconditional application to him in that behalf before judgment is delivered.

Ralli Brothers v. Goculbhai Mulchand⁽¹⁾ and *Bank of Bengal v. Vyabhoy Gangji*⁽²⁾ applied.

Section 9 of the Aden Courts Act (II of 1864) gives the Resident the same option of either reserving his judgment or delivering it contingent on the opinion

* Civil Application No. 78 of 1909 under extraordinary jurisdiction.

(1) (1890) 15 Bom. 376.

(2) (1891) 16 Bom. 618.

† Sections 8 and 9 of the Aden Courts Act (II of 1864) are as follows:—

(8) No appeal shall lie from any decision or order of the Resident given or made by him, whether in the exercise of his original jurisdiction, or in the exercise of his jurisdiction as a Court of appeal or of revision; but if, in the trial of any suit in which the claim estimated as aforesaid shall not exceed one thousand rupees in value, any question of law or of usage having the force of law or of the construction of a document affecting the merits of the decision shall arise, on which the Resident shall entertain doubts, the Resident may, either on his own motion, or on the application of any of the parties to the suit, draw up a statement of the case and submit it, with his own opinion, for the decision of the High Court of Judicature at Bombay.

And if, in the trial of any suit or the hearing of an appeal in any suit in which the claim estimated as aforesaid shall exceed one thousand rupees in value, any question of fact or of law or of usage having the force of law or of the construction of a document affecting the merits of the decision shall arise, the Resident shall, on the application of any of the parties to the suit, or he may on his own motion draw up a statement of the case and submit it, with his own opinion, for the decision of the said High Court.

(9) The Resident may proceed in the case notwithstanding a reference to the High Court, and may pass a decree contingent upon the opinion of the High Court on the point referred; but no execution shall be issued in any case in which a reference shall be made to the High Court, until the receipt of the order of that Court.

of the High Court as section 69 of the Presidency Small Cause Courts Act (XV of 1882) gives to the Presidency Small Cause Court.

APPLICATION under the extraordinary jurisdiction (section 155 of the Civil Procedure Code, Act V of 1908), against the decision of Major General E. De Brath, Political Resident, Aden, confirming the decree of Major J. R. Carter, Assistant Political Agent, Aden.

The plaintiff sued the defendant for the recovery of Rs. 8,077-11-6, being the balance of the amount advanced to the latter from the 15th September 1907 to the 12th January 1908 as per account attached to the plaint.

The Assistant Political Agent who tried the suit dismissed it with costs.

On appeal by the plaintiff, one of the prayers urged in the appeal was as follows:—"If, however, after considering all the circumstances, your Honour feels any reasonable doubt as to such a finding in my favour as regards the sugar item, I submit that your Honour will be pleased under section 8 of Aden Act II of 1864 to draw up a statement of this part of my case and submit it with your Honour's opinion to the Honourable High Court at Bombay." The Political Resident, however, who heard the appeal confirmed the decree without making the reference prayed for.

The plaintiff, thereupon, presented an application to the High Court under its extraordinary jurisdiction (section 155 of the Civil Procedure Code, Act V of 1908), urging that the Political Resident should have referred the case to the High Court under section 8 of the Aden Act and that he had no jurisdiction to decide the case finally. A rule *nisi* having been issued to the defendant to show cause why the decree of the Political Resident should not be set aside.

J. B. Patel with L. A. Shah appeared for the applicant (plaintiff) in support of the rule.

K. N. Koyaji appeared for the opponent (defendant) to show cause.

SCOTT, C. J. :—This is an application under section 115 of the Civil Procedure Code of 1908 for revision of a decree passed in appeal in a civil case by the Resident of Aden.

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A suit was instituted by the applicant in the Court of the Assistant Resident and was decided against him by that Judge.

An appeal was then preferred to the Resident with a statement of the appellant's case in which after setting forth his contentions with regard to a certain question regarding sugar which arose in the case, he said: "If, however, after considering all the circumstances your Honour feels any reasonable doubt as to such a finding in my favour as regards the sugar item, I submit that your Honour will be pleased under section 8 of the Aden Act II of 1864 to draw up a statement of this part of my case and submit it with your Honour's opinion to the High Court at Bombay."

The Resident having considered the argument advanced affirmed the decision of the Assistant Resident and did not draw up a statement of the case and submit it with his opinion for the decision of the High Court.

It is contended on behalf of the applicant that the Resident was bound, upon the application to which we have referred, to draw up a case and submit it for the decision of this Court in accordance with the provisions of section 8 of Aden Act II of 1864.

On behalf of the opponent it has been contended that no such application as is contemplated by that section was made to the Resident because the application which was made was a conditional application not to be acted upon unless the Resident felt reasonable doubt as to the correctness of the appellant's contentions.

In our opinion the argument of the opponent must prevail. The provisions of section 8 of the Aden Act are, in all material respects for the purposes of this case, the same as those of section 69 of Act XV of 1882, the Presidency Small Cause Courts Act, and we have the recorded opinion of Judges of this Court that any party requiring a case to be stated under that section of the Small Cause Courts Act is bound to make an unconditional application before the delivery of judgment. Thus in the case of

Ralli Brothers v. Goculbhai Mulchand⁽¹⁾, Mr. Justice Farran says: "It appears to me that the party who requires the Small Cause Court to state a case must do so unconditionally before judgment is delivered. To require the Small Cause Court to deliver judgment and to state a case only in the event of such judgment being adverse to the party requiring the case, would deprive the Court of the power of reserving judgment until after the opinion of the High Court is obtained, which power is expressly conferred upon it by the Act." Again, this Court in a judgment delivered by Sir Charles Sargent in the case of the *Bank of Bengal v. Vyabhoy Gangji*⁽²⁾ said: "The language of section 69 of the Small Cause Courts Act (XV of 1882) shows that the party requiring the Judge to make the reference to the High Court must do so before the Judge has delivered his judgment, as it gives the Judge the option, on being so required, either of postponing his judgment or delivering it contingent on the opinion of the High Court."

Now those remarks are directly applicable to the present case, because by section 9 of the Aden Act it is provided that the Resident may proceed in the case notwithstanding the reference to the High Court and may pass a decree contingent upon the opinion of the High Court on the point referred. It is to be observed that the word 'may' is used in this section while the word 'shall' is used in section 8. The permissive terms of section 9 are also in marked contrast with the imperative terms of the corresponding provision in section 7 of Act XXVI of 1864, the Presidency Small Cause Courts Act of the same year. We therefore think that section 9 of the Aden Act gives the Resident the same option as section 69 of the Small Cause Courts Act of 1882.

As pointed out in the judgments above referred to, to allow of reservation of judgment, the application must be made unconditionally before delivery of judgment.

For these reasons we dismiss the application with costs.

Application dismissed.

G. B. R.

(1) (1880) 15 Bom. 376 at p. 387.

(2) (1891) 16 Bom. 618 at p. 624.

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