

1911  
 BAI LAXMI  
 v.  
 HARIJIVAN  
 NATHU.

obvious that, although the plaintiff has proved that he is not possessed of more than a hundred rupees, there would be a denial of justice, since the leave to sue as a pauper would not save him from having his suit dismissed under the order for giving security.

In my opinion, therefore, the order of the Prothonotary was rightly made and is confirmed.

The costs of this application will be costs in the cause.

Attorneys for the plaintiff: *Messrs. Motichand & Devidas.*

Attorney for the defendants: *Mr. Thakoredas A. Gandhi.*

K. McI. K.

## ORIGINAL CIVIL.

*Before Mr. Justice Heaton.*

1911  
 November 18. MOORJI MANECK, PLAINTIFF, v. PASSU PARBHAT AND OTHERS,  
 DEFENDANTS.\*

*Bombay High Court Rules, rules 81, 321 and 323—Delegation of powers under rules 321 and 323 to the Prothonotary—Power of the Prothonotary to deal with applications to give short service of notice of motion.*

The plaintiff filed a suit against the defendants claiming *inter alia* the appointment of an *interim* receiver and an *interim* injunction. The plaintiff obtained from the Prothonotary leave to give the defendants short notice of a motion in the said suit under rules 321 and 323 of the Bombay High Court Rules. The defendants objected that the Prothonotary had no power to shorten the time for notice.

*Held* that the Prothonotary had such power.

THE plaintiff filed a suit against the defendants claiming that a partnership between himself and the defendants should be dissolved and wound up, that necessary accounts should be taken, that the shares of the parties should be ascertained and paid to them, the appointment of an *interim* receiver and an *interim* injunction against the defendants, costs and other relief. The plaintiff gave the defendants notice of a motion for the appointment of an *interim* receiver and for an *interim* injunction as prayed for in the plaint. The plaintiff obtained

\* Suit No. 972 of 1911.

an order from the Prothonotary giving him leave to give the defendants short service of the said notice of motion under rules 321 and 323 of the Bombay High Court Rules.

The defendants claimed that such an order could only be made by a Judge under the terms of rules 81 and 321 of the Bombay High Court Rules.

*Bahadurji* for the plaintiff.

*Setalwad* for the defendants.

HEATON, J.:—Whatever my own personal view may be regarding the delegation of powers to the Prothonotary under rules 81 and 321 of the Bombay High Court Rules, I find that the practice in the Prothonotary's Office is that applications to issue short notice under rule 321 are made to and disposed of by him. From the enquiries I have made I have reason to suppose that this practice is based on a legal interpretation of these Rules; and I further have no doubt that the legal interpretation in favour of that practice is one which it is quite open to an authority to take, on the terms of the rules themselves. I am entirely new to the practice and procedure of this side of the Court and I am indisposed to act on a personal view of the interpretation of the Rules, which would interfere with the established practice. Therefore I hold that the notice of motion in this matter is not bad.

H. S. C.

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