## ORIGINAL CIVIL

*Before the Hon'ble Mr. Justice Shah.*

G. CLARIDGE & CO., LTD., PETITIONERS *v.* THE INDUSTRIAL TRIBUNAL, RESPONDENT.*

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*Industrial Disputes Act (XIV of 1947), s. 10—Reference of certain disputes to the Industrial Tribunal—Establishment of a Wage Structure Jurisdiction of the Tribunal—Bombay Industrial Disputes Rule 20-A whether* ultra vires.

When a dispute for the establishment of a wage structure by fixing a monthly rate of wages on a specified basis is referred to the Industrial Tribunal, it is implicit in the dispute that the wage structure would have to be established by correlating the remuneration to be paid by the employer to the employee to the period for which the employees have to work for earning the wages. It would be impracticable to fix a wage structure without relating it to the hours of work for which the employees would have to work to earn their wages.

The fact that the Tribunal has established a wage structure on the basis of a uniform period of 42 hours a week is not a valid ground for challenging it as being beyond the scope of the Tribunal's authority simply because thitherto the employees were working in the petitioner's Company on the basis of 45 hours a week.

*Held,* therefore, that in so far as the Tribunal made its award for adjustment and payment of wages and for payment of overtime on the basis of 42 hours a week, the Tribunal had acted within the scope of its authority and its award is valid and binding.

*Held,* further that the Tribunal constituted under the Act is not an *ad hoc* Tribunal but is a permanent Tribunal constituted by the government for adjudication of industrial disputes whenever referred to it. The fact that the Tribunal derives its authority from an order of reference to adjudicate upon a dispute, does not extinguish its authority nor does it render the Tribunal functus officio after it has communicated its opinion to the Government.

*Held,* also that r. 20A framed by the Provincial Government is not *ultra vires* the Government under the rule-making authority derived under s. 38 of the Act.

The petitioners G. Claridge & Co. Ltd., were carrying on business as jobbing printers.

The Government of Bombay by its order of reference dated June 11, 1948, referred under s. 10 (*1*) of the Industrial Disputes Act, 1947, for adjudication to the Industrial Tribunal, certain disputes then existing between ten newspapers and printing presses including the petitioners and their workmen.

* O. C. J. Miscellaneous No. 385 of 1950.

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One of the matters referred to the Tribunal was in the following terms:—

"3. Wages—(*a*) In consultation with the union all occupations should be properly standardised and duties under each of them should be precisely defined.

(*b*) The occupations should be classified into (1) unskilled, (2) semi-skilled and (3) skilled.

(c) The present wage structure should be thoroughly revised and the monthly rates of wages should be fixed on the following basis:—

On September 28, 1949, the Industrial Tribunal made its award and in so doing made the following direction.

"All the presses will therefore have to adjust payment on the basis of a 42 hours week and payment for overtime shall also be on the basis stated above."

Thereafter the Bombay Government required the Tribunal to clarify the award under r. 20A of the Industrial Disputes (Bombay) Rules, 1947. Thereupon on September 29, 1950, the Industrial Tribunal made the following order.

"In the result therefore the Company shall pay overtime with effect from 1st July 1948 on the basis of the wage scales prescribed in the award. The overtime to be on the rates stated in the award i. e. after 42 hours up to 48 hours at proportionate rates and after 48 hours at the rates provided for in the Factories Act, 1948. The dues of the workmen calculated on the above basis should be paid not later than a month from the date this order becomes enforceable."

On December 1, 1950, the petitioners filed this petition asking for a writ of *certiorari* to quash the proceedings of the Tribunal in so far as they related to hours of work and payment for overtime.

*A. C. Beynon* and *H. M. Seervai* appeared for the petitioners.

*M. P. Laud* for respondents Nos. 1 and 2.

*N. V. Phadke* for respondents Nos. 3 & 4.

SHAH J. This is a petition filed by G. Claridge and Co. Ltd., of Bombay for the issue of a writ of *certiorari* against the Industrial Tribunal appointed by the State of Bombay under the provisions of the Industrial Disputes Act, XIV of 1947, and against the State of Bombay and two employees of the petitioners who were impleaded on behalf of themselves and all other persons interested in deriving benefit under awards dated September 28, 1949, and September 29, 1950, made by the Industrial Tribunal. The petitioners have prayed that this Court

do call for records and proceedings of the Industrial Tribunal and do quash the orders and awards dated September 28, 1949, and September 29, 1950, in so far as they relate to hours of work and 'payment for overtime'. The relevant averments made in the petition may be shortly stated.

The petitioners are a company incorporated under the Indian Companies Act, 1913, having their registered office in Bombay. The Government of Bombay by their order of reference dated June 11, 1948, made under s. 10 (*1*) of the Industrial Disputes Act, 1947, referred all disputes existing between ten newspapers and printing presses mentioned in the schedule to the order (including the petitioners), and their workmen, regarding the matters specified in annexture A to the order of reference, to the adjudication of the Industrial Tribunal consisting of Mr. Salim M. Merchant. One of the matters referred to was demand No. 3 relating to "wages". On the reference coming on for hearing before the Industrial Tribunal, an award was made on September 28, 1949, which was published in the *Bombay Government Gazette Extraordinary* on October 13, 1949. It was submitted that in adjudicating the dispute relating to the subject-matter of the demand relating to wages, the Industrial Tribunal provided for a wage-scale and purported to declare that wage-scale on the basis of a 42 hours week, whereas the petitioners had always worked for 45 hours a week. It was submitted that there was no dispute between the petitioners and their workmen at any material time as to the number of hours of work, nor as to 'the payment for overtime', and no demand had been made by the petitioners or by their workmen relating to either of those matters. The Industrial Tribunal had by paragraph 24 of the award directed the petitioners to adjust payment of wages on the basis of a 42 hours week and payment for overtime work also on that basis Inasmuch as no industrial dispute had been raised between the petitioners and their workmen with regard to the hours of work and with regard 'to payment for overtime' and that no reference had been made to the Industrial Tribunal in that behalf, the petitioners submitted that the award in so far as it dealt with the hours of work and with the 'payment for overtime' was *ultra vires*. It was further stated that the Government of Bombay purporting to act under r. 20A of the Industrial Disputes (Bombay) Rules, 1947, made a reference to the Industrial Tribunal for clarification of its award with regard to hours of work, and the Industrial Tribunal purporting to act

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in pursuance of that reference made a further order on September 29, 1950, providing for 'hours of work' and 'payment for overtime'. That direction dated September 29, 1950, was published by the Government of Bombay in a supplementary award in the *Bombay Government Gazette Extraordinary* on October 2, 1950. The petitioners submitted that the Industrial Tribunal became *functus officio* in the matter of the reference on the publication of the award on October 13, 1949, and the reference under r. 20A to the Industrial Tribunal and the further direction of the Tribunal were *ultra vires* and were accordingly a nullity. Feeling aggrieved by the action of the Industrial Tribunal in dealing with the hours of work and with 'payment for overtime' and in passing orders and in issuing directions touching those matters, the petitioners filed this petition for the issue of a writ of *certiorari* for quashing the proceedings of the Industrial Tribunal in so far as they relate to hours of work and payment for overtime.

Mr. G. V. Dave, Under-Secretary to the Government of Bombay, Labour and Housing Department, has filed an affidavit on behalf of the State of Bombay. He has contended *inter alia* that the issue referred to and decided by the Industrial Tribunal on September 29, 1950, was a part of the very issue which the Tribunal had to enquire into, under the reference made by the Government of Bombay by order of reference dated June 11, 1948, under s. 10 (*1*) of the Industrial Disputes Act, 1947. He has further submitted that, even assuming that there was no dispute relating to the hours of work and payment for overtime, the Tribunal was entitled to adjudicate, as it did, in order to make its decision effective, and the ancillary direction was essential to the rest of its award; and inasmuch as the petitioner declined to implement the award by carrying out the directions contained in the award, and inasmuch as the industrial dispute raised between the petitioners and their workmen regarding the date from which the directions contained in the award regarding the payment of revised wages and also for overtime work were to come into operation, the Government of Bombay under r. 20A of the rules made under the Industrial Disputes Act, 1947, moved the Tribunal at the instance of the petitioners, seeking clarification of its award in regard to hours of work and payment for overtime, as agreed between the petitioners and their workmen; and that the order dated September 29, 1950, passed by the Industrial Tribunal in pursuance of the reference made to the Tribunal by the Government of Bombay was an order which the Industrial

Tribunal had jurisdiction to make in respect of hours of work and payment for overtime. It was submitted that the original award and the subsequent elucidation were within the jurisdiction of the Industrial Tribunal, and the subsequent elucidation having been obtained from the Tribunal by the Government of Bombay at the express desire of the petitioners and their workmen, it was binding upon the petitioners.

By his affidavit dated January 30, 1951, Mr. M. N. Mudliar, respondent No. 3, has substantially adopted the contentions raised on behalf of respondent No. 2, the State of Bombay.

Two questions fall to be decided in the present case: (1) whether in so far as the Industrial Tribunal directed by paragraph 24 of its award that "all the presses will have to adjust payment on the basis of a 42 hours week and payment for overtime shall also be on the basis as stated above," the award was in excess of the order of reference made on June 11, 1948, and (2) whether the subsequent clarification dated September 29, 1950, by the Industrial Tribunal in pursuance of the reference made by the Government of Bombay was *ultra vires*. In order to appreciate the two questions it is necessary to refer to some of the provisions of the Industrial Disputes Act, XIV of 1947.

The Act was passed, as the preamble mentions, to make provision 'for the investigation and settlement of industrial disputes, and for certain other purposes' as appearing in the Act. Chapter II of the Act provides constitution of various authorities; and under s. 7 of that chapter the appropriate Government is entitled to constitute one or more Industrial Tribunals for the adjudication of industrial disputes in accordance with the provisions of the Act. Under s. 10, which falls in Chapter III, it is open to the appropriate Government to refer a dispute to a Tribunal for adjudication where an industrial dispute exists or is apprehended. Section 11 provides for the procedure and powers of conciliation officers, Boards, Courts and Tribunals which may be appointed under the Act. Section 15 provides for the duties of Tribunals. Section 16 provides for the form of report or award, and s. 17 provides, *inter alia*, that the award shall, within a period of one month from the date of its receipt by the appropriate Government, be published in such manner as it thinks fit. Section 18 of the Act provides *inter alia*, that an award after its declaration by an appropriate Government shall be binding

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pute and certain other classes of persons. Section 20, sub-s. (*3*) provides that the proceedings before a Tribunal shall be deemed to have commenced on the date of the reference of a dispute for adjudication, and such proceedings shall be deemed to have concluded when the award is published by an appropriate Government under s. 17, or, where an award has been laid before the Legislative Assembly under the proviso to sub-s. (*2*) of s. 15, when the resolution of the Legislative Assembly thereon is passed. There are certain miscellaneous provisions made in Chapter VII which prevent employers from altering to the prejudice of the workmen concerned in the dispute the conditions of service applicable to them immediately before the commencement of the proceedings and the mode and the manner in which the cognizance of offences committed under the Act may be taken. Section 38 provides for the power to make rules, and enables the appropriate Government to make rules for the purpose 'of giving effect to the provisions of the Act.'

The purpose of the Act is to provide machinery for a just and equitable settlement by adjudication by independent Tribunals, by negotiation and by conciliation of industrial disputes. The Act is designed to substitute arbitration and fair negotiation instead of a trial of strength by strikes and lock-outs, in settling industrial disputes. The scheme of the Act is to provide Tribunals or Boards of Conciliation or Courts of Enquiry to which disputes may be referred and the opinion of the Tribunal or the Court of Enquiry or the Board of Conciliation may be obtained, and on the opinion of the Board, or the Court or of the Tribunal being obtained on the publication of the award report or settlement, by the appropriate Government the same is deemed to be binding. The Act is intended to enable parties to industrial disputes to obtain an opinion of an independent Tribunal, as to the basis or terms of a settlement.

In this case the Government of Bombay by its order dated June 11, 1948, as subsequently modified, referred the industrial disputes between the newspapers and printing presses mentioned in the schedule to that order, and workmen employed therein regarding certain matters which were specified in the annexture A to the order, to the Industrial Tribunal. The industrial disputes specified related, *inter alia,* to Matter (3)'wages' (*a*) in consultation with the Union all occupations should be properly standardised and duties under each of them

should be precisely defined; (*b*) the occupations should be classified into (1) unskilled, (2) semi-skilled, and (3) skilled; (*c*) the present *wage structure* should be thoroughly revised and the monthly rates of wages should be fixed on certain basis; Matter 16 relating to Information on pay slips and envelopes for the benefit and knowledge of the employees relating to certain details, which included 'hours of overtime and amount due': Matter 17 relating to monthly record tickets under which the employees claimed that they should be given a monthly record ticket on which *inter alia* the rate of wages and overtime were to be specified.

At the hearing of these industrial disputes, the Tribunal proceeded to prescribe a wage scale. The scheme adopted by the Tribunal is set out in paragraph 24 of the award. Under the scheme all wages are to be calculated on the basis of a 42 hours work per week and the payments to be made to the workmen are to be adjusted on the basis of that period. Payment for work done in excess of 42 hours a week is called overtime payment, and a schedule for that payment is also devised.

The petitioners say that before the disputes were referred to the Industrial Tribunal they were working for 45 hours a week, and contend that when there was a reference merely to a dispute relating to wages (which meant wages for the period for which the employees worked), it was not open to the Tribunal to alter the basic period adopted by the petitioners for calculation of wages and to provide for an arbitrary and unreal wage-period, and to make a provision for calculation of wages on the basis of a 42 hours wage-period, and to direct extra payment for work done in excess of that period. Mr. Seervai says that there was a dispute between the petitioners and their workmen relating to the rate of remuneration for work done, and he submits that the workmen had never contended that the working hours were excessive. He further says that there being no dispute as to hours of work, it could never have been in the contemplation of the parties to the dispute to submit a non-existent dispute relating to hours of work for adjudication. He further points out that item No. 3 of the annexture did not at all refer to any dispute relating to the rate of payment for work done, and contends that the wage-structure to be established should have been established with reference to the number of hours of work the petitioners were accustomed to work and not with reference to an arbitrary

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42 hours week devised by the Industrial Tribunal. Mr. Seervai further submits that it was not open to the Tribunal to fix the wage structure with reference to any number of hours of work other than 45 hours of work per week and to provide for payment of overtime exceeding 42 hours a week.

In my judgment that contention is not well founded. Under cl. (c) of item No. 3 there was a dispute with regard to the 'present wage structure', and it was claimed that it should be revised and a monthly rate of wages should be fixed on the specified basis. Now, if a wage structure is required to be established by a Tribunal to which a dispute relating to wages is referred, it is implicit in the dispute that the structure would have to be established by correlating the remuneration to be paid by the employer to the employee to the period for which the employees have to work for earning the wages. In my opinion it would be impracticable to fix a wage structure without relating it either expressly or impliedly to the period of work for which the employees would have to work to earn their wages. It is true that under the Indian Factories Act the maximum hours which the news-papers and the printing presses could work per week is 48, but it is conceded that different newspapers and printing presses which were governed by the Factories Act of 1948 were working for varying periods. It would have been possible for the Industrial Tribunal to fix a wage scale for each press or factory with reference to the number of hours of work during which that factory or press was accustomed to work and to have devised a wage structure on that basis. But the fact that the Tribunal has established a wage structure with reference to a uniform period of a 42 hours week is not in my judgment a ground which lays the wage structure open to challenge that it deals with matters which have not been referred to the Tribunal. In this connection 'matters 16 and 17' of the Annexture are relevant. They refer to the maintenance of records of hours of overtime and amounts due and rates of wages and overtime. If for the information of the workers 'information slips and envelopes' and monthly tickets' were to be given, and there was a dispute with regard to the issue of those information slips and monthly tickets, it is implicit in those items that the Tribunal is to fix the basic period for calculation of wages, and to provide the rate of payment for work done in excess of that period. If the authority to fix a basic wage period is granted, whether that basic period

should be uniform in a particular industry or a section of the industry or should vary from member to member is a matter left to the discretion of the Tribunal founded on considerations of convenience in working out the details relating to the payment of wages and overtime. I am therefore of the opinion that in so far as the Tribunal directed in its original award in paragraph 24 that all the presses will have to adjust payment on the basis of a 42 hours week and payment for overtime should be on that basis, the Tribunal had not acted in excess of its authority.

On that view of the case, the second question which has been raised, namely, that the reference for clarification by the Government of the matter relating to hours of work per week and of overtime is merely academic; but as the matter has been argued before me at length, I propose to give my reasons for holding that neither the reference nor the clarification by the Tribunal was *ultra vires*.

On May 3, 1950, the petitioners addressed a letter to the Deputy Director of Labour Administration, exh. A, in which it was stated :

"Our press worked for 45 hours each week up to December 31, 1949, and whilst the direction contained in paragraph 24 may be intended to mean that those presses which worked in excess of 42 hours a week should pay over-time, our contention is that such direction can only apply in cases where there were demands for the fixation of hours of work and for over-time. No such demands were formulated against this Company and we are unable to agree with the Union that in terms of the Award we are bound to pay over-time for hours of work worked in excess of 42 hours a week, with effect from July 1, 1948. Without prejudice to this contention this Company is prepared to pay over time as from the date of publication of the Award namely October 13, 1949, in respect of the hours worked each week in excess of 42 hours. If the Union is not prepared to accept this proposal then you will no doubt consider taking the appropriate steps with a view to getting the Adjudicator to clarify the position. In this connection it must however be borne in mind, as stated above, that so far as this company is concerned there were no demands before the Adjudicator for the fixation of hours of work or for over-time."

It appears that in pursuance of that letter written on May 3, 1950, the Government of Bombay made a reference for clarification to the Tribunal, and a supplementary award was given on September 29, 1950, which was published by the Government of Bombay. It is true that if the Tribunal was *functus officio* after it made its award on September 28, 1949, on the

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disputes referred to it and had no jurisdiction to make any further award, then the mere fact that it was at the instance of the petitioners that the Government was induced to make the reference to that Tribunal and a supplementary award was given either with or without an objection raised before the Tribunal, cannot render that supplementary award a valid or a binding award and the publication of that award by the Government under s. 17 of the Industrial Disputes Act cannot invest it with any binding effect. I am, however, unable to accept the argument of Mr. Seervai that the Tribunal became *functus officio* on September 28, 1949, when it signed the award on the matter submitted to it on the reference under s. 10 of the Act. On the scheme of the Act, as I have set out earlier, it appears that under the Act, it is open to the appropriate Government to constitute a Tribunal under s. 7. The Tribunal so constituted is not an *ad hoc* tribunal constituted for the purpose of any industrial dispute or class of disputes, but is a permanent Tribunal constituted by the Government for adjudication of industrial disputes. It is true that the authority of the Tribunal to give its opinion on the question or questions referred to it is not derived under any statute or general regulation but is derived solely from the order of reference which may be made by an appropriate Government under s. 10 of the Act. But the fact that a Tribunal derives its authority from an order of reference to adjudicate upon a dispute does not extinguish the authority of the Tribunal nor does it render the Tribunal *functus officio* when the Tribunal communicates its opinion to the Government which referred the dispute. On disputes being raised, the appropriate Government is entitled to refer those disputes to the Tribunal and the Tribunal may make their award on the disputes referred, and for the purpose of the disputes so referred and decided by an award, the proceedings before the Tribunal may be deemed to be concluded. But the Tribunal does not become *functus officio qua* those disputes nor does it come to an end with the making of an award. That in my view is the scheme of ss. 7, 10, 15, 17 and 18 of the Industrial Disputes Act, and that view is supported by the provision of s. 11, sub-s. (3), which provides that a Tribunal shall have powers as are vested in a civil Court under the Code of Civil Procedure, 1908, when trying a suit and every enquiry or investigation by a Tribunal shall be deemed to be a judicial proceeding within the meaning of ss. 193 and 228 of the Indian Penal Code.

Mr. Seervai has very strenuously contended that under sub-s. (3) of s. 20 a proceeding referred to a Tribunal is concluded by an award made by the Tribunal and that the Tribunal either comes to an end or it becomes *functus officio qua* that dispute. In my judgment the provision of sub-s. (3) of s. 20 appears to have been enacted only for providing terminii for purposes of s. 23 and other provisions of the Act. If it was intended by the Legislature that the Tribunal was to come to an end or was to be *functus officio* as soon as an award was made on the adjudication of the dispute referred to it, then it would have been easy for the Legislature to have made an express provision to that effect. Sub-section (3) of s. 20 makes provision for the date on which the proceeding shall be deemed to be terminated before a Tribunal, and that is necessary to be provided for in view of the provision of s. 23 and other provisions of the Act. If the Tribunal does not become *functus officio* or the Tribunal does not come to an end then, in my judgment, it would be possible for the Tribunal in certain circumstances to consider any matter which may arise out of the award.

Mr. Seervai has further argued that in any case r. 20A of the rules framed by the Government of Bombay on March 2, 1948, which enables a Provincial Government to make a reference for decision on a question of intepretation is *ultra vires* the Government. It is contended that the rule transgresses the limits of the rule-making authority conferred upon Government under s. 38 of the Industrial Disputes Act, XIV of 1947. It is argued that even if the Tribunal is not *functus officio,* or that the jurisdiction of a Tribunal is deemed not to have come to an end, in so far as r. 20A authorises the Provincial Government to make a reference to a Tribunal for a decision on a question as to the interpretation of the award, that rule is *ultra vires.*

Section 38 of the Industrial Disputes Act, XIV of 1947, enables the appropriate Government, subject to the condition of previous publication, to make rules for the purpose of giving effect to the provisions of this Act. Under sub-s. (2) of s. 38 the rules may provide for all or any of the matters specified in that section, and that such rules may be made in particular and without prejudice to the generality of the provision of sub-s. (1) of s. 38. In cl. (*g*) of sub-s. (2) of s. 38 it is enacted that

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the rule may provide for any other matter which is to be or may be prescribed. It is true that the power to make rules for the interpretation of awards is not to be found in cls. (*a*) to (*f*) of sub-s. (*2*) of s. 38, but in my judgment the expressions used in sub-s. (*1*) of s. 38 are sufficiently wide in so far as they provide for making rules for giving effect to the provisions of the Act. A rule which enables an interpretation to be obtained of an award from the Tribunal which has made the award is not beyond the scope of sub-s. (*1*) of s. 38. The expression 'any other matter' in cl. (*g*) of sub-s. (*2*) of s. 38 also appears to be sufficiently wide to include a reference for obtaining an interpretation of an award. It is, however, unnecessary to rely upon the terms of cl. (*g*) of sub-s. (*2*) if the provisions of sub-s. (*1*) enable the rule-making authority to make a provision for making a reference for giving effect to the provisions of the Act. The Act as framed enables the Tribunal to make its award. Before the Industrial Disputes (Appellate Tribunal) Act of 1950 was enacted there was no provision by which directions in an award could be enforced otherwise than by prosecuting the person failing to carry out those directions. There was in effect no authority which could effect specific enforcement of the award but the parties to the award were expected to carry out the directions of the award and in default were liable to be prosecuted. It is conceivable that an award may be obscure in some directions and the parties may be genuinely in doubts as to its precise effect or implications. If therefore, a procedure was devised for obtaining an interpretation of the award from the Tribunal which was the author of the award in order to clarify what may apparently be obscure or indefinite, it cannot be said that the procedure so devised for obtaining that interpretation is not 'for the purpose of giving effect to the provisions' of the Act. The Act having intended that an award should be made which would finally decide the disputes between the workers and employers, a provision which enables an interpretation of an award to be obtained from the Tribunal which made that award would, in my judgment, be a provision which gives effect to the provisions of the Act.

I am, therefore, of the view that r. 20A framed by the Provincial Government is not *ultra vires* the Government under the rule-making authority derived under s. 38 of the Act.

Both the contentions raised by Mr. Seervai on behalf of the petitioners therefore fail, and the petition must be dismissed with costs.

*Petition dismissed.*

A. J. P.

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Attorneys for petitioners : *Crawford, Bayley & Co.*

Attorneys for respondents Nos. 1 and 2 : *Little & Co.*

Attorneys for respondents Nos. 3 and 4 : *Vakil, Dadabhai & Bharucha.*

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## APPELLATE CIVIL

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*Before the Hon'ble Mr. M. C. Chagla, Chief Justice, and Mr. Justice Gajendragadkar.*

1951 *Feb. 6*

DASHARATHRAO GANPATRAO JOSHIRAO (ORIGINAL DEFENDANT No. 1), APPELLANT *v.* RAMCHANDRARAO VINAYAKRAO JOSHIRAO AND OTHERS (ORIGINAL PLAINTIFFS AND DEFENDANTS NOS. 2 TO 8), RESPONDENTS.*

*Hindu law—Partition—Suit for—Plaintiffs within four degrees from last holder in ascent but removed by more than four degrees from defendants—Whether right of partition is barred.*

The rule of Hindu law is that all the members of a joint family who are not removed more than four degrees from the last holder are coparceners, however remote they may be from the original holder of the property. If a person is removed by more than four degrees from the last holder he does not acquire any interest in the property of the family by birth and as such he is not entitled to demand a partition. But once that person enters the coparcenary by coming within four degrees from the last holder in direct line of male ascent and acquires a right by birth in the family property, his right to demand partition is not extinguished merely because he seeks to enforce that right against persons in possession who are more than four degrees removed from him.

*Moro Vishvanath* v. *Ganesh Vithal*,[1] explained.

First Appeal against the decision of V. B. Potdar, Esquire, Civil Judge, Senior Division, Kolhapur.

Suit for partition and possession.

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* First Appeal No. 182 of 1950 (with F. A. No. 197 of 1950).

[1] (1873) 10 B. H. C. R. 444.