

1955  
TAXING  
OFFICER,  
HIGH  
COURT, A.S.  
v.  
JAMNADAS  
DHARAMDAS  
Shah J.

the question whether the Court which is designated as a Tribunal under the Displaced Persons (Debts Adjustment) Act is a Court subject to the superintendence of the High Court within the meaning of s. 4 of the Court-fees Act.

In my view, the appeals are governed by the provisions of Schedule II clause 11, of the Court-fees Act and are chargeable with court-fee accordingly.

*Answer accordingly.*

K. B. S.

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### APPELLATE CIVIL

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*Before Mr. M. C. Chagla, Chief Justice, and Mr. Justice Tendolkar.*

1955  
Sept. 21

LAXMIDAS DEVIDAS KAPADIA (ORIGINAL DEFENDANT), PETITIONER v. MATHURADAS DWARKADAS (ORIGINAL PLAINTIFF), RESPONDENT.\*  
*Civil Procedure Code (Act V of 1908), O. XXXVII, XXVII-A, ss. 122, 128—Constitution of India, arts. 14, 132, 147—Rule framed by High Court under s. 122 of Code, extending provisions of O. XXXVII to City Civil Court, Bombay, whether offends against art. 14—O. XXXVII of Code, whether procedural—Notice upon Advocate General and Attorney General under O. XXVII-A of Code, when necessary.*

The rule framed by the Bombay High Court under s. 122 of the Civil Procedure Code, 1908, by which the provisions of O. XXXVII of the Code are extended to the City Civil Court, Bombay, is not *ultra vires* on the ground that it offends against art. 14 of the Constitution of India.

*Ambalal Purshottamdas & Co. v. Jawarlal,*<sup>(1)</sup> referred to.

Order XXXVII of the Code of Civil Procedure, 1908, is purely procedural and the High Court has power under s. 128 read with s. 122 of the Code to frame a rule extending its provisions to the Courts under its superintendence.

It is only when a substantial question of law as to the interpretation of the Constitution arises that it is incumbent upon a Court to serve notice upon the Advocate-General and the Attorney-General under O. XXVII-A of the Code of Civil Procedure, 1908.

One Mathuradas (respondent) filed a summary suit in the City Civil Court at Bombay against Laxmidas (petitioner) to recover a sum of Rs. 19,787-4-9 on a writing executed by the petitioner. The respondent having taken out a summons for Judgment in the suit the Court made an order granting leave to the petitioner to defend the suit upon his depositing Rs. 9,500 within eight weeks from the date of the order. The petitioner filed in the High Court an application in revision challenging the rules

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\*Special Civil Revision Application No. 788 of 1955.

1. [1953] A. I. R. Cal. 758.

framed by the High Court (under which the provisions of O. XXXVII of the Code of Civil Procedure, 1908, were made applicable to the City Civil Court), as *ultra vires* on the ground that they offended against art. 14 of the Constitution of India.

The petition came up before a Division Bench hearing constitutional matters.

The petition was heard.

N. A. Palkhivala, with M. M. Vakil, and Vakil Dadabhai and Bharucha, for the Petitioner.

K. K. Desai, with Mazgaonwalla & Co., for the Opponent.

Chagla C. J.—This is one of those usual applications which seek to extend the time granted by the learned Judge of the City Civil Court for making a deposit in a summary suit. The only difference between this application and others is that it is a little more ingenious than the others we have dealt with in the past.

A civil revision application was preferred to this Court under s. 115 of the Civil Procedure Code challenging an order made by the learned Judge of the City Civil Court in a summary suit on a promissory note directing that the petitioner should make a deposit of Rs. 9,500 by a certain date. The civil revision application was admitted by Mr. Justice Shah and the application came up for final hearing before Mr. Justice Bavdekar. At that stage the petitioner contended that he challenged the rules framed by this Court under which the provisions of O. XXXVII were made applicable to the City Civil Court and his contention was that these rules were *ultra vires* as they offended against art. 14 of the Constitution and also that they were invalid. Mr. Justice Bavdekar granted leave to the petitioner to amend the petition and as it raised a constitutional question it has come up before us for disposal.

The first application of Mr. Palkhivala, which is again obviously intended for further delay, is that proper notice should be served upon the Advocate General and/or the Attorney General under O. XXVII-A of the Civil Procedure Code and that the hearing of this petition should be postponed until such notice has been served. It is important to lay down the proper procedure with regard to the necessity of serving a notice upon the Advocate General and the Attorney General under O. XXVII-A. It was never the intention of the Legislature and it could not be the intention of the Legislature, that in every frivolous and vexatious application made challenging a State law or a Union law the Advocate General or the Attorney General should be served with a notice. We are sure that the Advocate General and the Attorney General have got more important things to do than to attend to such frivolous and vexatious applications. But this is not a mere matter of our conjecture as to what the intention of the Legislature was,

1955

LAXMIDAS  
DEVIDAS  
v.  
MATHURADAS  
DWARAKADAS

Chagla.C. J.

1955

LAXMIDAS  
DEVIDAS  
v.  
MATHURADAS  
DWARAKADAS

Chagla C. J.

because O. XXVII-A itself states in rule 1 that the case where a notice has to be served is a case where a question referred to in cl. 1 of art. 132 read with art. 147 of the Constitution is involved, and when we turn to art. 132 the case there referred to is a case involving a substantial question of law as to the interpretation of the Constitution. Therefore, it is not every question of law as to the interpretation of the Constitution, however frivolous, however vexatious, however untenable, that requires the Court to serve a notice upon the Advocate General or the Attorney General, but it must be a question of law as to the interpretation of the Constitution which must be substantial, and it is difficult to conceive of any question of law as to the interpretation of the Constitution which is more unsubstantial than the question raised in this application. Order XXXVII which deals with summary suits only applies to the High Courts of Judicature at Fort William, Madras and Bombay. Under s. 122 of the Code, High Courts have been given the power to make rules regulating their own procedure and the procedure of the Civil Courts subject to their superintendence, and in the exercise of this power they may by such rules annul, alter or add to all or any of the rules in the First Schedule. Section 128 provides:

“(1) Such rules shall be not inconsistent with the provisions in the body of this Code, but, subject thereto, may provide for any matters relating to the procedure of Civil Courts.”

It is under this power conferred upon the High Court that we framed a rule by which we extended the provisions of O. XXXVII to the City Civil Court, and it is urged by Mr. Palkhivala on behalf of the petitioner that in conferring that jurisdiction upon the City Civil Court we have offended against art. 14 which provides for equality before the law.

It has often been stated that art. 14 does not require uniformity of application of law. What art. 14 prohibits is a classification which is not upon any rational basis. Article 14 does not prevent the Legislature from providing that laws shall apply differently to different persons or to different localities if in so providing the Legislature has in mind a rational classification. Article 14 prohibits a classification which has no rational basis or which is in substance discriminatory in character. The very expression “discriminatory” means that you apply one law to one party or to one locality and a different law to another party or a different locality without there being any reasonable object in doing so, and the question that we have to consider is whether, when the Legislature conferred the jurisdiction of trying summary suits only upon the High Court and left it to the High Court to apply this provision to any Civil Court subordinate thereto, it was passing a law which was discriminatory in character and preventing litigants from enjoying the

protection of art. 14. The very basis of summary suits is that where there is commercial litigation commercial men should get expeditious justice in respect of documents and transactions which are commercial in their nature and which require a quick disposal in order to give security and confidence to commercial men who are to a large extent responsible for the prosperity of the particular region or city where they reside and where they carry on their business or commerce. If that be the correct view of the reason why special jurisdiction with regard to summary suits is conferred upon the High Court, then it cannot be disputed that the city of Bombay is an important commercial city and that special procedure is necessary in suits involving commercial transactions in the High Court of Bombay. We have, for instance, rules with regard to commercial causes which make it possible for those causes to be decided more quickly than ordinary long causes. If Mr. Palkhivala's contention were right, even those rules would offend against art. 14. But in our opinion there is a clear logical reason why the Legislature enacting the Civil Procedure Code conferred this special power upon the High Court with regard to summary suits.

Turning to the conferment of this jurisdiction upon the City Civil Court, it should be borne in mind in the first instance that the City Civil Court is doing the same work which the High Court used to do on the Original Side before the City Civil Court was set up, and therefore if special procedure with regard to commercial matters is justified in the High Court, it is equally justified in the City Civil Court. But even assuming the City Civil Court was not doing the same kind of work, the City Civil Court is a Court in the city of Bombay and in matters which are within the jurisdiction of the City Civil Court and which are not of such extensive value as are entertained by the High Court, commercial men come to the City Civil Court as much as they go to the High Court and therefore this High Court thought it desirable that commercial men going to the City Civil Court should have the same facilities that they have when they come to the High Court and no distinction should be made whether the suit is below Rs. 25,000 or above Rs. 25,000. In our opinion, therefore, there is a clear reasonable basis why the City Civil Court in Bombay was selected by the High Court for conferment of this jurisdiction, whereas the other Courts in the State of Bombay were not included in the ambit of O. XXXVII.

It is then said that this rule also offends against art. 14 on a different ground that a selection is made between one kind of litigation and another kind of litigation, and that whereas a defendant in a suit to which O. XXXVII does not apply is not compelled to make a deposit, a defendant in a suit to which

1955

LAXMIDAS  
DEVIDAS  
v.  
MATHURADAS  
DWARAKADAS

Chagla C. J.

1955

LAKMIDAS  
DEVIDAS

v.

MATHURADAS  
DWARKADAS

Chagla C. J.

summary procedure applies has to comply with this drastic provision of an order for deposit contemplated by O. XXXVII. The answer to this contention is what we have already suggested that commercial litigation in its very nature requires to be differently treated from non-commercial litigation, and it is no use suggesting that any ordinary suit which is tried as a long cause should have the same procedure as a suit in respect of a commercial transaction which requires a quick and effective disposal. The Calcutta High Court considering the same question has come to the same conclusion and the judgment is of Mr. Justice Mukharji which is reported in *Ambalal Purshottamdas & Co. v. Jawarlal.*<sup>(2)</sup> With respect, we entirely agree with the views expressed by the learned Judge.

The second contention urged by Mr. Palkhivala is that the rule is invalid because we have no power to frame this rule under s. 128 read with s. 122, and the argument is put this way that s. 128 permits the High Court to frame rules with regard to matters relating to the procedure of Civil Courts and it is said that the power to dispose of suits in accordance with the provisions of O. XXXVII is a matter relating to the jurisdiction of the Court and not relating to its procedure. The contention is obviously untenable. Jurisdiction goes to the question of the power of a Court to entertain a suit. Jurisdiction has either a territorial or a pecuniary aspect and some suits may not be entertained because there is no territorial jurisdiction and other suits may not be entertained by a Court because they are beyond its pecuniary jurisdiction. Summary procedure has nothing to do with the right of a Court to entertain a particular suit. The Court must have jurisdiction to entertain the suit before the question arises as to whether it can apply the summary procedure. Therefore O. XXXVII is purely procedural and it empowers the Court to try a suit by one kind of procedure rather than another, but it only comes into operation provided the Court which applies O. XXXVII has jurisdiction to entertain the suit. Therefore, in our opinion, there is no substance in this contention either.

The result is that the application fails and must be dismissed with costs.

Time for making the deposit extended for a fortnight from today. Mr. Palkhivala on behalf of his client undertakes that he will not make any application in the City Civil Court or in this Court for any extension of time.

*Application dismissed.*

K. B. S.