

1961

April 3.

MOHANLAL JAIN

v.

HIS HIGHNESS MAHARAJA SHRI SAWAI
MAN SINGHJI(S. K. DAS, J. L. KAPUR, M. HIDAYATULLAH,
J. C. SHAH and T. L. VENKATARAMA AYYAR, JJ.)*Civil Procedure—Suit against Ex-Ruler—Maintainability—Immunity of Ex-Rulers from being sued—If discriminatory—“Sued”, Meaning of—Code of Civil Procedure, 1908 (Act V of 1908), ss. 86, 87-B—Constitution of India, Art. 14.*

The appellant filed a suit for the recovery of money as price of goods supplied against the Ex-Ruler of Jaipur. Subsequently s. 87-B was introduced in the Code of Civil Procedure making the provisions of s. 86 in respect of suits against rulers of foreign States applicable to the rulers of former Indian States. The Ex-Ruler raised the plea that the suit was incompetent as the consent of the Central Government had not been obtained as required by s. 87-B. The appellant contended: (i) that s. 87-B violated Art. 14 of the Constitution and was void, (ii) that s. 87-B did not apply to the continuation of a suit pending at the time when s. 87-B was enacted but only to the filing of a suit after the enactment of that section.

Held, that s. 87-B did not violate Art. 14 of the Constitution and was not void. Section 87-B of the Code of Civil Procedure merely continued the privilege which was formerly enjoyed by the Rulers of Indian States and in regard to which the covenants entered into by the Ex-Rulers and the Government of India provided for their continuance. This agreement about the privileges was further assured by Art. 362 of the Constitution. The Ex-Rulers thus formed a class and the special legislation was based upon historical considerations applicable to them as a class. The classification was based on a distinction which was real and substantial and it bore a just relation to the object sought to be attained.

Held, further, that the suit was incompetent against the Ex-Ruler of Jaipur. The protection of s. 87-B read with s. 86 applied both to the filing of a suit and to its pursuit through the courts. Section 86 provides that “No Ruler.....may be sued in any court.....” A person is “sued” not only when the plaint is filed against him, but is “sued” also when the suit remained pending against him. The word “sued” covers the entire proceedings in an action. Consequently, the consent of the Central Government was necessary not only for the filing of the suit against the Ex-Ruler but also for its continuation from the time consent was required.

Held, further, that s. 87-B was on its terms applicable to pending suits and there was no saving in favour of pending actions.

K. C. Mukherjee v. Mst. Ram Ratan Kuer, (1935) I.L.R. 15 Pat. 268, applied.

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 20 of 1960.

Appeal from the judgment and decree dated September 5, 1956, of the Judicial Commissioner's Court at Ajmer in Civil First Appeal No. 3 of 1956.

B. D. Sharma, for the appellant.

M. C. Setalvad, Attorney-General of India, *C. L. Agarwala*, *M. K. Ramamurthy*, *R. K. Garg*, *D. P. Singh* and *S. C. Agarwal*, for the respondents 1 and 3.

1961. April 3. The Judgment of the Court was delivered by

HIDAYATULLAH, J.—This is an appeal by the plaintiff against the judgment and decree of the Judicial Commissioner, Ajmer, confirming the decree of the trial Judge dismissing the suit. It comes before us on a certificate under Arts. 132(1) and 133(1)(c) of the Constitution granted by the High Court of Rajasthan after the Reorganisation of the States.

The suit was filed by the appellant for recovery of Rs. 23,998-12-0 as price of goods supplied in the year 1947 to the Ruler of Jaipur State, (including interest) and damages suffered by the appellant due to the refusal of the defendants to take delivery of some other goods similarly ordered. In addition to the ex-Ruler of Jaipur, his Military Secretary and one Mohabat Singh, an employee of the ex-Ruler, were also joined as defendants, on the plea that they had placed the orders as agents of the ex-Ruler. The suit was filed on February 28, 1951. The ex-Ruler raised the plea that the suit was incompetent, as the consent of the Central Government under s. 87-B of the Code of Civil Procedure was not obtained and asked that the suit be dismissed. The other defendants denied the claim and also their liability on various grounds. It may be mentioned the Military Secretary (second

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defendant) has since died, and this appeal is now directed against the ex-Ruler and Mohabat Singh only.

The Subordinate Judge held that though the suit was filed prior to the enactment of s. 87-B by s. 12 of the Code of Civil Procedure (Amendment) Act, 1951 (II of 1951), it could not be continued against the ex-Ruler. He adjourned the hearing for four months to enable the appellant to obtain the necessary consent. The appellant applied to the Central Government for its consent, but it was refused. He also applied in revision to the Judicial Commissioner, contending that s. 87-B of the Code of Civil Procedure offended the equality clause in Art. 14 of the Constitution and was thus void, but the Judicial Commissioner rejected the contention. He also refused a certificate on the ground that there was no final order as required by Art. 132(1) of the Constitution. The suit was subsequently dismissed against all the three defendants. In regard to the ex-Ruler, it was held that no suit lay against him without the consent of the Central Government, and in regard to the remaining defendants, it was held that they were protected by s. 230 of the Indian Contract Act. Sub-section (3) of that section was held inapplicable, inasmuch as a suit could be filed against the ex-Ruler with the consent of the Central Government. The appellant appealed to the Judicial Commissioner, Ajmer, but the appeal was dismissed. He obtained a certificate, as stated above, and this appeal has been filed.

Two main questions have been raised in this appeal. The first is that the dismissal of the suit against the ex-Ruler was erroneous. In support of this contention, it is urged that s. 87-B of the Code of Civil Procedure is *ultra vires* the Constitution in view of Art. 14, and, in the alternative, that s. 87-B, even if valid, cannot apply to this suit, which was pending when the section was enacted. The right to continue the suit being a substantive right, cannot, it is submitted, be taken away except by a law which is made applicable to pending actions, either expressly or by necessary intendment. Against the other respondent, it is contended that he was liable as an agent or at least, as a

sub-agent, in view of the provisions of s. 230(3) of the Indian Contract Act. We are not concerned with the merits of the claim, and they have not been mentioned at the hearing.

We shall begin by considering whether s. 87-B is *ultra vires* and void. It is said that it discriminates in favour of ex-Rulers of Indian States by creating an immunity from civil actions. Prior to the present Constitution, Part IV of the Code of Civil Procedure contained provisions in respect of suits in particular cases. This was divided into three parts. Sections 79 to 82 dealt with suits by or against the Crown or Public Officers in their official capacity and s. 88 provided for suit of interpleader. We are not concerned with them. Sections 83 to 87 dealt with suits by aliens and by or against Foreign Rulers and Rulers of Indian States. Sections 83 and 84 provided respectively when aliens and foreign States may sue. Section 85 provided for the appointment by Government of persons to prosecute or defend Princes or Chiefs. Section 86 provided for suits against Princes, Chiefs, Ambassadors and Envoys. It created partial ex-territoriality by granting them exemption from civil jurisdiction except when an action was brought with the consent of the Central Government. The first sub-section provided:—

“Any such Prince or Chief, and any ambassador or envoy of a foreign State, may in the case of the Ruling Chief of an Indian State with the consent of the Crown Representative, certified by the signature of the Political Secretary, and in any other case with the consent of the Central Government, certified by the signature of a secretary to that Government, but not without such consent, be sued in any competent Court.”

The remaining four sub-sections dealt with the kinds of suits and the conditions under which they could be brought and certain other aspects of ex-territoriality. Section 87 laid down the style of Princes or Chiefs as parties to suits.

After the coming into force of the Constitution,

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certain adaptations were made by the President by the Adaptations of Laws Order, 1950, but we are not concerned with them. Suffice it to say that the protection continued in view of Art. 372 of the Constitution (unless it was void under the Chapter on Fundamental Rights) till we come to the enactment of Act II of 1951. The impact of the Fundamental Rights provisions on s. 86 as originally enacted and on the new s. 87-B being the same, we need not consider the matter separately.

When the Indian States integrated with British India, the Rulers of States and the Government of India entered into covenants and agreements. In those covenants, it was agreed that the privileges, dignities and titles of the Indian Princes would be continued to be recognised. When the Constitution was enacted, the assurance in the covenants was respected, and Art. 362 was included in the Constitution. It reads:

“In the exercise of the power of Parliament or of the Legislature of a State to make laws or in the exercise of the executive power of the Union or of a State, due regard shall be had to the guarantee or assurance given under any such covenant or agreement as is referred to in clause (i) of Article 291 with respect to the personal rights, privileges and dignities of the Ruler of an Indian State.”

The reference to Art. 291 merely indicates that those covenants or agreements were meant which the Ruler of any Indian State had entered into with the Central Government before the commencement of the Constitution. This description is not repeated in Art. 362, but is incorporated by reference. The mention of Art. 291 in Art. 362 has no further significance, and the generality of the assurance in the latter Article is not lessened.

The privilege of ex-territoriality and exemption from civil jurisdiction except with the consent of the Central Government was one of long standing, and when the Amendment Act of 1951 was passed, ss. 83 to 87 were re-enacted. We are not concerned with all the changes that were made, and reference to some

of them is unnecessary. Section 86 was amended by deleting all references to Ruling Chiefs of Indian States and the first sub-section was re-enacted as follows:

“86. (1) No Ruler of a foreign State may be sued in any court otherwise competent to try the suit except with the consent of the Central Government certified in writing by a Secretary to that Government:” (proviso omitted).

Sub-section (3) gave protection against arrest and, except with the consent of the Central Government, against execution of decrees against the property of any such Ruler. Section 87 laid down the style of foreign Rulers as parties to suits. Section 87-A was added to define “foreign State” and “Ruler” and to make the exemption only available to a State and its head, recognised as such by the Central Government.

Section 87-B, with which we are concerned, was specially enacted in respect of suits against Rulers of former Indian States. It provided:

“87-B. (1) The provisions of section 85 and of sub-sections (1) and (3) of section 86 shall apply in relation to the Rulers of any former Indian State as they apply in relation to the Ruler of a foreign State.

(2) In this section—

(a) ‘former Indian State’ means any such Indian State as the Central Government may, by notification in the Official Gazette, specify for the purposes of this section; and

(b) ‘Ruler’ in relation to a former Indian State, means the person who, for the time being, is recognised by the President as the Ruler of that State for the purposes of the Constitution.”

By this provision, which is very much the same as the former s. 86, the privilege previously enjoyed by the Rulers of Indian States was continued.

In this historical background, the question of discrimination raised in the appeal must be examined. It is easy to see that the ex-Rulers form a class and the special legislation is based upon historical considerations applicable to them as a class. The Princes

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who were, before integration, sovereign Rulers of Indian States, handed over, after the foundation of the Republic, their States to the Nation in return for an annual Privy Purse and the assurance that their personal rights, privileges and dignities would be respected. The Constitution itself declared that these rights, etc., would receive recognition. A law made as a result of these considerations must be treated as based on a proper classification of such Rulers, who had signed the agreement of the character described above. It is based upon a distinction which can be described as real and substantial, and it bears a just relation to the object sought to be attained.

It is further contended that the Article speaks of privileges but not of immunities, and we were referred to certain other Articles of the Constitution where "immunities" are specifically mentioned. It is not necessary to refer to those Articles. Immunity from civil action may be described also as a privilege, because the word "privilege" is sufficiently wide to include an immunity. The Constitution was not limited to the choice of any particular words, so long as the intention was clearly expressed. In our opinion, the words "personal rights and privileges" are sufficiently comprehensive to embrace an immunity of this character. It is, therefore, clear that the section cannot be challenged as discriminatory, because it arises from a classification based on historical facts.

It is next contended that s. 87-B only applies the provisions of sub-ss. (1) and (3) of s. 86, that the words of the latter section are not retrospective, that the suit was filed before the enactment of s. 87-B, and that the substantive right of the plaintiff to continue his suit could not be taken away in the absence of express language or clear intendment. The words of s. 86(1) are "No Ruler of a foreign State may be sued in any court...". This precludes, it is said, only the initiation of a suit and not the continuance of a suit already filed before the section was enacted. In our opinion, these arguments cannot be accepted. The word "sued" means not only the filing of a suit or a civil proceeding but also their pursuit through Courts. A person

is sued not only when the plaint is filed, but is sued also when the suit remains pending against him. The word "sued" covers the entire proceeding in an action, and the person proceeded against is sued throughout the duration of the action. It follows that consent is necessary not only for the filing of the suit against the ex-Ruler but also for its continuation from the time consent is required. In view of the amplitude of the word "sued", it is not necessary to consider generally to what extent pending cases are affected by subsequent legislation or refer to the principles laid down in *The United Provinces v. Atiqa Begum* ⁽¹⁾, *Venugopala Reddiar v. Krishnaswamy Reddiar* ⁽²⁾ or *Garikapatti Veeraya v. N. Subbiah Choudhury* ⁽³⁾. If the language of s. 86 read with s. 87-B were applicable only to the initiation of a civil suit, these cases might have been helpful; but since the words "may sue" include not only the initiation of a suit but its continuation also, it is manifest that neither the suit could be filed nor maintained except with the consent of the Central Government. In *Atiqa Begum's Case* ⁽¹⁾, Varadachariar, J. referred to the two principles applicable to cases where the question of retrospectivity of a law has to be considered. They are that vested rights should not be presumed to be affected, and that the rights of the parties to an action should ordinarily be determined in accordance with the law, as it stood at the date of the commencement of the action. But, the learned Judge pointed out that the language of the enactment might be sufficient to rebut the first, and cited the case of the Privy Council in *K. C. Mukherjee v. Mst. Ram Ratan Kuer* ⁽⁴⁾. Here, the matter can be resolved on the language of the enactment. The language employed is of sufficient width and certainty to include even pending actions, and the contrary rule applies, namely, that unless pending actions are saved from the operation of the new law, they must be taken to be affected. The word "sued", as we have shown, denotes not only the start but also the continuation of a civil action, and the

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(1) [1940] F.C.R. 110.

(2) [1943] F.C.R. 39.

(3) [1957] S.C.R. 488.

(4) (1935) J.L.R. 15 Pat. 268.

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prohibition, therefore, affects not only a suit instituted after the enactment of s. 87-B but one which, though instituted before its enactment, is pending. In our judgment, the present suit was incompetent against the first defendant, the ex-Ruler of Jaipur.

It is contended that defendants 2 and 3 acted as the agents of the ex-Ruler and placed the order with the appellant. The position of the Military Secretary (since dead) was on a different footing, but it is conceded that no cause of action against him survived, because the appeal has abated against him. Mohabat Singh, who is the third defendant, cannot be described as an agent of the ex-Ruler, because his connection with the orders placed was merely to sign the letters purporting to emanate from the Military Secretary. Those letters he signed "for the Military Secretary". He was not acting as the agent of the ex-Ruler but was performing the ministerial act of signing the letters on behalf of the Military Secretary. This cannot be said to have constituted him an agent. The suit against him was, therefore, misconceived, whatever might have been said of the Military Secretary.

In our opinion, the dismissal of the suit was justified in the circumstances of the case.

The appeal fails, and is dismissed with costs. The appellant will pay court-fee on the memorandum of appeal, as he was allowed to file this appeal as a pauper.

Appeal dismissed.