

1962

April 30.

SHALIGRAM

v.

DAULAT RAM

(J. L. KAPUR, A. K. SARKAR, K. C. DAS GUPTA,
N. RAJAGOPALA AYYANGAR and
J. R. MUDHOLKAR, JJ.)

Foreign Decree—Execution—Judgment—Debtor Submitting to jurisdiction of court—Decree if executable against him.

The High Court of Bombay passed a decree against three defendants who were resident of the former state of Hyderabad. Before it was passed the appellant had applied for leave to defend which was conditionally granted and on his failure an ex-parte decree was passed. The appellant did not file any written statement. On transfer, the respondent took out execution in the Court of District Judge, Bhir, to which the appellant object on the ground inter-alia, that the decree was a foreign decree and could not be executed in the Court at Bhir, which being overruled, an appeal was taken to the High Court and the High Court dismissed the appeal on the ground that the appellant had submitted to the jurisdiction of the Bombay High Court.

Held, that a person who appeared in obedience to the process of a foreign Court and applied for leave to defend the suit without challenging the jurisdiction of the Court must be held to have voluntarily submitted to the jurisdiction of such Court and therefore this decree did not suffer from any defect which a foreign decree would suffer without such submission.

Shaik Atham Sahib v. Davud Sahib, (1909) I. L. R. 32 Mad. 469, referred to.

Held, further, that as the Code of Civil Procedure was made applicable to Hyderabad State when order of transfer was made, the decree could be executed there.

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 225 of 1961.

Appeal from the judgment and order dated October 24, 1958, of the Bombay High Court in L. P. A. No. 50 of 1958.

Ganpat Rai, for the appellant.

M. S. K. Sastri and *M. S. Narasimhan*, for the respondents.

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1962. April 30. The Judgment of the Court was delivered by

KAPUR, J.—This is an appeal on a certificate of the High Court under Art. 133(1) (c) of the Constitution against the judgment and order of the High Court of Bombay. The appellant was the judgment-debtor and the decree-holder is the respondent.

Kapur J.

The decree was passed in August 26, 1931 in Summary Suit No. 3437 of 1930 by the High Court of Bombay against three defendants who were residents of Parbhani district in the former State of Hyderabad. Before the decree was passed the appellant had applied for leave to defend and leave was conditionally granted on his depositing Rs. 5,000/- within four weeks. This, he did not do and on his failure to do as an *ex-parte* decree was granted for Rs. 52,032-7-0 including costs and future interest at 6% per annum. The appellant did not file any written statement. The decree was transferred for execution to the District Judge, Bhir, in Hyderabad States. The respondent took out execution on June 18, 1954 in the Court of the District Judge, Bhir, to which objection was taken by the appellant, *inter alia*, on the ground that he had not submitted to the jurisdiction of the Bombay High Court which was a foreign court and therefore the decree was a foreign decree and could not be executed in the Court at Bhir. This objection was overruled. Against that order appeal was taken to the High Court and it was held by that Court on July 29, 1958 that the appellant had submitted to the jurisdiction of the Bombay High Court and the appeal was therefore dismissed and the order of the Executing Court upheld. The

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Letters Patent appeal against that judgment was dismissed in limine on October 24, 1958. It is against that order that the appeal has been brought on the certificate of the High Court under Art. 133(1)(c).

A person who appears in obedience to the process of a foreign Court and applies for leave to defend the suit without objecting to the jurisdiction of the Court when he is not compellable by law to do so must be held to have voluntarily submitted to jurisdiction of such Court *Shaikh Atham Sahib v. David Sahib*(¹). Therefore it cannot be said that this decree suffered from the defects which a foreign *ex-parte* decree without such submission would suffer from. The order for transfer was made at a time when the Indian Code of Civil Procedure became applicable to the whole of India including the former territories of Hyderabad State. The order of transfer was therefore valid and effective and the decree could therefore be executed.

The appeal, in our opinion, is without merit and is therefore dismissed with costs.

Appeal dismissed.

(1) (1909) I.L.R. 32 Mad. 469.