

MARTIN SILVA AND ANOTHER
v
CENTRAL ENGINEERING CONSULTANCY
BUREAU AND ANOTHER

COURT OF APPEAL
WEERASURIYA, J. (P/CA) AND
BALAPATABENDI, J.
C.A. 207/96 (F)
D.C. COLOMBO 14485/MR
FEBRUARY 18, AND
APRIL 29, 2002

Civil Procedure Code, sections 9 and 45 – Defendant a legal person – Where is the "residence" ? – Does section 9 apply to a legal person? – Is the registered office the residence ?

The plaintiff-appellant instituted action in the District Court of Colombo against the defendants-respondents seeking damages arising from an accident which caused the death of the son. The defendants-respondents, whilst denying liability contended that the 1st defendant-respondent being a corporate body has no "residence" within the meaning of section 9.

The trial court held with the defendant-respondents.

On appeal

Held *Per* Weerasuriya, J.

"Despite the failure to effect the legislative clarification as spelt out in the Civil Courts Commission Report, it seems to me that a liberal interpretation is permissible to include a corporate body as residing at its registered office, where there is no other place of business."

- (i) Procedural enactments should be construed liberally in such manner as to render the enforcement of substantive rights effective and that rules of procedure are not by themselves an end and the means to achieve the ends of justice.
- (ii) Rules of procedure are tools forged to achieve justice and are not hurdles to obstruct the pathway to justice.

"Courts are not to act upon the principle that every procedure is to be taken as prohibited unless it is expressly provided for by the Code, but in the converse principle that every procedure is to be understood as

permissible till it is shown to be prohibited by law. As a matter of general principle, prohibition cannot be presumed.

APPEAL from the judgment of the District Court of Colombo.

Cases referred to :

1. *Govindarajajulu Naide v Secretary of State* (1927) AIR Madras 689
2. *Mendis v Perera* – 13 NLR 39
3. *Kanappa Chetty v Saibo & Company* – CLR Vol. II – 37
4. *Hevavitharana v Themis de Silva* – 63 NLR 68 at 72
5. *Narasimha Das v Mangal Dubey* – (1883) 5 Allahabad 163 at 172
6. *Blue Diamonds Ltd., v Amsterdam Rotterdam Bank* (1993) 2 Sri LR 249
7. *Sirimavo Bandaranaike v Times of Ceylon Ltd.*, (1995) 2 Sri LR 22(SC)
8. *De Beers Consolidated Mines Ltd., v Howe* – The Law Times – Vol XC111 – 63
9. *Somasiri v Ceylon Petroleum Corporation* (1992)1 Sri LR 39.

Ranjan Suwandarathne for plaintiff-appellant

Y.J.W. Wijayatilake, Deputy Solicitor General for defendants-respondents.

Cur.adv.vult

May 14, 2002

WEERASURIYA, J. (P/CA)

The plaintiff-appellants brought this action against the defendant-respondents seeking damages in a sum of Rs.881,000/= arising from an accident which caused the death of their son, Dharmasiri Silva. The defendant-respondents in their joint answer whilst denying liability prayed for dismissal of the action. This case was taken up for trial on 31.03.1995 and issues Nos. 7 and 8 were accepted as preliminary issues of law for adjudication. Learned district Judge having directed the parties to tender written submissions by her order dated 07.05.1996, dismissed the action. It is from the aforesaid order that this appeal has been preferred.

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At the hearing of this appeal, learned counsel for the plaintiff-appellants contended that learned District Judge has erred in holding that the 1st defendant-respondent being a corporate body has no 'residence' within the meaning of section 9 of the Civil Procedure Code.

Section 9 of the Civil Procedure Code lays down that subject to the pecuniary or other limitations prescribed by any law, action shall be instituted in the Court within the local limits of whose jurisdiction;

- (a) a party defendant resides; or
- (b) the land in respect of which the action is brought lies or situate in whole or in part; or
- (c) the cause of action arises; or
- (d) the contract sought to be enforced was made.

The 1st defendant-respondent admitted in its answer –

1. that it is a duly incorporated bureau by an Act of Parliament and it is a legal person; and
2. that the registered office of the 1st defendant-respondent is situated at the address given in the caption namely No.415, Bullers Road, Colombo 7.

Learned counsel for the plaintiff-appellants contended that a person can be a natural person or a legal person and therefore the 'party defendant referred to in section 9 includes a natural person as well as a legal person.

Learned Deputy Solicitor General contended that section 9 being a section conferring jurisdiction on the District Court does not apply to a legal person as it does not "reside" within the meaning of section 9 of the Civil Procedure Code. He cited the case of *Govindarajulu Naide v Secretary State*⁽¹⁾ where it was held that the word "resides" must be taken to refer to natural persons and not to legal entities such as limited companies or governments.

Therefore, the question to be decided is whether in terms of section 9 of the Civil Procedure Code the plaintiff-appellants are entitled to institute action against the 1st defendant-respondent on the basis that the 1st defendant-respondent "resides" within the jurisdiction of the District Court of Colombo.

In *Mendis v Perera*⁽²⁾ it was held that a person may be said to reside where he has his family establishment and home.

In *Kanappa Chetty v Saibo & Company*⁽³⁾ it was held that the place where a party defendant carries his business is not a place where he resides.

In Bindra's *Interpretation of Statutes* (8th Edition – 1997 p.582) it is stated that there is a difference in the matter of construction between a law dealing with substantive rights which are already vested and one relating to procedure. It emphasises that procedural enactments should be construed liberally in such manner as to render the enforcement of substantive rights effective and that rules of procedure are not by themselves an end but the means to achieve the ends of justice. Rules of procedure are tools forged to achieve justice and are not hurdles to obstruct pathway to justice. Construction of the rule of procedure which promotes justice and prevents its miscarriage by enabling the court to do justice in myriad situations, all of which cannot be envisaged, acting within the limits of permissible construction must be preferred to that which is rigid and negatives the ends of justice.

In *Hevavitharana v Themis de Silva*⁽⁴⁾ Thambiah, J. quoted with approval *dictum* of Mahamood, J. in *Narasingh Das v Mangal Dubey*⁽⁵⁾ that "Courts are not to act upon the principle that every procedure is to be taken as prohibited unless it is expressly provided for by the Code, but on the converse principle that every procedure is to be understood as permissible till it is shown to be prohibited by the law. As a matter of general principle prohibition cannot be presumed".

In *Blue Diamonds Limited v Amsterdam-Rotterdam Bank*⁽⁶⁾ it was held that section 45 of the Civil Procedure Code requires a statement of facts setting out jurisdiction of the Court to try and determine the claim and the necessary averments must appear in the body of the plaint in the form of distinct averments. It was further held that the plea based on the residence in the plaint was insufficient as there was no unequivocal assertion that Amro resides within jurisdiction.

In this case (*Blue Diamonds Ltd.*) the Supreme Court left open

the question whether the word 'resides' appearing in section 9(a) applies to a corporate body. Despite reference to cases of *Mendis v Perera (supra)* and *Chetty v Saibo (supra)* and the failure of the authorities to incorporate the recommendations of the Civil Courts Commission of 1950, Supreme Court stated that it was unnecessary to decide this question since it took the view that the plea based on residence in the plaint was insufficient to establish residence.

It is true that section 9 of the Civil Procedure Code while conferring jurisdiction on the District Court to entertain action within whose jurisdiction, a party defendant resides, has not defined or specified circumstances in which a defendant who does not actually reside is nevertheless deemed to reside. 90

Section 20 of the Civil Procedure Code of India (1908) provided that the place where a defendant was carrying on business would determine jurisdiction. The explanation to the section provided as follows.

"A corporation shall be deemed to carry on business at its sole or principal office in India or in respect of any cause of action arising at any place where it has a subordinate office at such place". 100

There is no similar provision in our Code despite a recommendation to that effect by the Civil Courts Commission appointed in 1950 which brought out a revised Draft Code (Vide Sessional Paper No.XXIV of 1955 – Draft Code section 3(1) (a)).

In *Sirimavo Bandaranaike v Times of Ceylon Ltd.*⁽⁷⁾ it was observed that a registered office gives the company a domicile and a residence.

In *De Beers Consolidated Mines Ltd. v Howe*⁽⁸⁾ it was held that for the purposes of Income Tax Acts a foreign corporation may be "a person residing within the United Kingdom". 110

Despite the failure to effect the legislative clarification as spelt out in the Civil Courts Commission Report – Draft Code section 3(1) (a) (published as Sessional Paper No.XXIV of 1955), it seems to me that a liberal interpretation is permissible to include a corporate body as residing at his registered office where there is no other

place of business. In the instant case, the defendant-respondent did not take up the position that it has several branch offices in the island. The 1st defendant-respondent stated in its answer that it has its registered office at No. 415, Bullers Road, Colombo 7. 120

In *Somasiri v Ceylon Petroleum Corporation*⁽⁹⁾ it was held that even if the residence of the corporation is not distinctly and clearly averred, it is no ground to reject the plaint or dismiss the action, when the plaintiff-appellant has averred the principal place of business at the mentioned address as within the jurisdiction of the Court.

The plaintiff-appellants have distinctly averred that the registered office of the 1st defendant was at No.415, Bullers Road, Colombo 7. Therefore, this averment is sufficient for the purpose of 130 conferring jurisdiction on the District Court of Colombo.

For the above reasons, I set aside the order of the District Judge dated 07.05.1996 and remit the case to the District Court for further trial on the remaining issues.

BALAPATABENDI, J. – I agree.

Appeal allowed.