

1951

Present: Rose C.J. and Choksy A.J.

EGRIS, Appellant, and HAMID SIMAIL, Respondent

S. C. 70 (*Inty*)—D. C. Colombo, 23,656

*Ceylon (Constitution) Order in Council, 1946—Proviso to Section 14 (2)—Action for penalty for sitting or voting in Parliament when disqualified—Limits of discretion of Court to withhold leave to bring such action.*

A Member of the House of Representatives may be sued a second time, by a common informer, for penalty under the provisions of Section 14 of the Ceylon (Constitution) Order in Council, 1946, if the first action brought by another plaintiff had been dismissed for want of appearance of the plaintiff and without consideration of the merits.

Leave to proceed with an action for penalty should not be refused by the District Court except for sound reasons.

**A**PPPEAL from an order of the District Court, Colombo.

*H. W. Jayewardene*, for the plaintiff appellant.

*M. H. A. Aziz*, for the defendant respondent.

*Cur. adv. vult.*

December 14, 1951. ROSE C.J.—

The plaintiff-appellant, a common informer, filed an action under Section 14 (2) of the Ceylon (Constitution) Order in Council, 1946, in the District Court of Colombo for the recovery of a sum of Rs. 83,000 by way of penalty from the defendant-respondent on the ground that the said defendant-respondent having reasonable grounds for knowing that he was disqualified from sitting and voting as a member of the House of Representatives had continued to do so on the several dates set out in the schedule to the plaint.

The learned District Judge, purporting to act under the proviso to sub-section 2 of Section 14 of the said Order in Council, refused to give him leave to the action being further continued.

It appears that a similar action on the same facts, but covering in part a different period of time, had previously been brought by another plaintiff in the same court. This action was dismissed for want of appearance and it was, therefore, unnecessary for the merits of the action to be gone into.

It was the circumstance of this earlier action having been thus dismissed that led the learned District Judge to refuse his leave for the plaintiff in the present matter to proceed further with this action.

The District Judge, of course, has a discretion in deciding whether or not to withhold his leave under the aforesaid proviso, but if the exercises that discretion for reasons which appear to this court as unsound, then, in my opinion, it is our duty to intervene.

It seems to me that the public interest in a matter of this type must take precedence over the private convenience of a member of Parliament, and that the public interest requires that actions of this sort should have the opportunity of being decided on their merits. Had the earlier action been dismissed after a consideration of the merits, then, no doubt, the position would have been different, but as the matter has not yet been considered from that aspect by a court of law, I consider that the learned District Judge erred in withholding his leave from the plaintiff.

That being so, the appeal is allowed, the order of the learned District Judge is set aside, and the matter is remitted to the District Court to enable the necessary leave to be granted. The appellant will have the costs of this appeal in any event.

CHOKSY A.J.—I agree.

*Appeal allowed.*

