

APPELLATE CIVIL

Before Soni, J.

M|S STEEL AND GENERAL MILLS CO., LTD,—Appellant.

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versus

GENERAL ACCIDENT FIRE AND LIFE ASSURANCE CORPORATION LTD and (2) Mrs. P. N. NARANG,—Respondents.

First Appeal from order No. 31 of 1951

Displaced Persons (Institution of Suits) Act (XLVII of 1948), Sections 3 and 4—Displaced person, whether includes an artificial person—Limited Company, whether a displaced person—Company Residence.

Held, that the definition of the phrase “displaced person” occurring in sections 3 and 4 of the Act refers not only to natural persons but also to artificial persons and includes a Limited Liability Company, and it can sue at the place of its residence. A Company is said to reside at the place of its administrative office where the Central management and control of the Company actually abides and real business is carried on.

First Appeal from the order of Shri T. C. Gupta, Sub-Judge, 1st Class, Delhi, dated the 27th October 1950, ordering that the plaint and the documents be returned to the plaintiff under Order 7, rule 10, Civil Procedure Code, for presenting them to a court of competent jurisdiction.

KUNDAN LAL GOSAIN, for Appellant.

IKHLAQ HUSSAIN and KRISHEN LAL KAPUR, for Respondents.

JUDGMENT

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SONI, J. Messrs Steel and General Mills Company Limited, having its administrative office at 10-A, Cavalary Lines, Delhi, brought the present suit for recovery of Rs. 18,750 against the General Accident and Fire Assurance Corporation Limited, Calcutta, later referred to in this judgment as the Assurance Company. The allegations on which the suit was brought were that the plaintiff got insured with the Assurance Company, *inter alia*, the contents of bungalow No. 1 which was the bungalow of the General Manager of the plaintiff Mills, that the Assurance Company had issued policy No. 1-A 183518 in that connection, that on the 27th of May 1947, the Assurance

Company extended the policy in certain respects at the request of the plaintiff so as to cover the belongings of Mrs P. N. Narang who occupied that bungalow, that on the 9th of July 1947, Mrs Narang occupying the bungalow left, as usual, for hills for summer leaving the belongings in the bungalow, that owing to the partition of the country she could not return to the bungalow at Lahore and it was not possible for her to return on the expiry of the summer season, that with great efforts she was there in the last week of February 1948, and whatever could be found in the house was recovered and brought to Delhi. On checking it was found that goods worth Rs. 18,750 had been lost during the disturbances. As the policy of assurance was an All Riot Risks Policy the plaintiff claimed that the defendant, the Assurance Company, was liable to make good the loss and to pay Rs. 18,750, that the loss was reported to the representative of the Assurance Company at Delhi on the 14th of April 1948, and that though the defendant Assurance Company wrote saying that the loss was receiving their consideration they eventually on the 8th of August 1949, wrote to the plaintiff repudiating the claim. On that the present suit was brought and put in Court on the 8th of November 1949.

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A preliminary objection was raised to the jurisdiction of the Court at Delhi and the learned trial Judge put it in issue. Evidence was recorded on this issue and after the recording of the evidence the learned trial Judge came to the conclusion that the Delhi Court had no jurisdiction. He, therefore, returned the plaint to the plaintiff to present it to a court of proper jurisdiction. The plaintiff has appealed.

The plaintiff relied on sections 3 and 4 of the Displaced Persons (Institution of Suits) Act, 1948, being Act XLVII of 1948, for the contention that the suit could be brought by the plaintiff at Delhi. He also relied on the fact that a part of the cause of action arose in Delhi and that, therefore, the Delhi Courts had jurisdiction. The trial Judge repelled both these contentions.

M/S Steel and In section 3 of Act XLVII of 1948 a displaced person is General Mills defined thus :—

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“ Displaced person means any person who, on account of the setting up of the Dominions of India and Pakistan, or on account of civil disturbances or fear of such disturbances in any area now forming part of Pakistan, has been displaced from, or has left, his place of residence in such area after the 1st day of March 1947, and who has subsequently been residing in India.

The contention of the plaintiff is that it is a displaced person. The trial Judge held that the word “displaced person” referred to natural persons and not to artificial persons.

Section 4 of the Act reads :—

“ Notwithstanding anything contained in section 20 of the Code of Civil Procedure, 1908 (V of 1908), or in any other law relating to the local limits of the jurisdiction of Courts or in any agreement to the contrary, a displaced person may institute a suit in Court within the local limits of whose jurisdiction he or the defendant or any of the defendants where there are more than one at the time of the commencement of the suit, actually and voluntarily resides or carries on business, or personally works for gain, if—

- (i) the defendant, or where there are more than one, each of the defendants, actually and voluntarily resides or carries on business, or personally works for gain in India and is not a displaced person ;
- (ii) the cause of action, wholly or in part, arises or has arisen in a place now situate within the territories of Pakistan ;
- (iii) the court in which the suit is instituted is otherwise competent to try it ; and

(iv) the suit does not relate to immovable property." M/S Steel and General Mills Co., Ltd.

There is no doubt that the cause of action arose in Lahore where the loss occurred because of disturbances. There is no doubt that the defendant Assurance Company actually and voluntarily resides and carries on business in India and is not a displaced person. There is no doubt that the Court is otherwise competent to try the suit and the suit does not relate to immoveable property. The only question, therefore, left for consideration is whether the plaintiff comes within the definition of the phrase "displaced person". As I have said before, the learned trial judge held that this phrase refers to natural persons and not to artificial persons. I do not agree with the learned trial Judge on this point. Learned counsel for the plaintiff cited the case of *Travancore National and Quilon Bank, Ltd. v. L. Raghuraja Bharathi and others*, (1), where Venkataramana Rao, J., adopted with approval at page 324 the following passage from Foote in his book on Private International Law, Edition 5, at page 178. The passage runs thus :—

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"Further, just as a natural person must be pronounced for the purposes of domicile, to be resident in some one place more than in any other, however nicely balanced the evidence may be, so a corporation should be regarded as necessarily having its seat or centre of operations in some one spot to the exclusion of all others. It may be difficult to decide between two or more places whose claims appear conflicting, but it appears to be the duty of the law to pronounce between them and to declare that in fact as well as in law one establishment is the centre where the corporation resides while the other establishments are merely branch offices or agencies.

(1) A. I. R. 1939 Mad. 318.

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The domicile of a corporation is in fact the place where "the brain which controls the operations of the company is situate."

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According to Foote a company can have a residence as much as a private individual. The same view was taken by my Lord the Chief Justice of this Court in the case of the New Hindustan Bank Limited in liquidation, Civil Original No. 91 of 1949. His judgment is dated the 27th of June 1951. In the course of the judgment the Chief Justice said :—

"The only question which calls for consideration is whether the Bank can be said to have resided in Lahore before partition or to have resided in Amritsar or at Delhi after partition. It is a commonplace that for certain purposes a company is a juridical person, and it can sue and can be sued; also it can be fined. For income-tax purposes the residence of a company is expressly contemplated by section 4-A (c) of the Indian Income-tax Act, which provides that for the purposes of the Act a company is resident in India in any year (a) if the control and management of its affairs is situated wholly in India in that year, or (b) if its income arising in India in that year exceeds its income arising without India in that year. I can see no reason to imagine that the intention of the Legislature when enacting the Displaced Persons (Institution of Suits) Act, 1948, was to discriminate between individuals and companies and I think there is no difficulty in accepting the residence of a company for the purposes of this Act the place where its registered office was situate. If this is correct, then the plaintiff Bank satisfies the definition of section 3 of the Act."

Therefore in my opinion the learned trial Judge was not correct in saying that Act XLVII of 1948 referred only to natural persons. The trial Judge relied for his decision on two rulings reported in A.I.R. 1930 Lah. 818 and A.I.R. 1927 Mad. 689. These were cases in which the Secretary of State for India in Council had been sued and it was held that the Secretary of State for India in Council could not be held to reside in the particular place where the suit was brought. In the course of his observations in A.I.R. 1927 Mad. 689 the learned Chief Justice of that Court had said that the phrase 'actually and voluntarily resides' must be taken to refer to natural persons and not to legal entities such as limited companies or Governments. So far as the reference was to limited companies the remark was obiter. I prefer to follow Foote on this point and my Lord the Chief Justice of this court.

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The point seems to have never been doubted in England. In the case of *the Keynsham Blue Lime Company (Limited) v. Baker*, (1), an action had been brought to recover a certain sum of money and the question was whether the plaintiffs dwelt more than 20 miles from the defendant. The section of the statute which the Court had to consider was section 128 of County Courts Act, 9 and 10 Vict. c. 95. That section ran as follows :—

“ That all actions and proceedings which before the passing of this Act might have been brought in any of Her Majesty's superior Courts of record where the plaintiff dwells more than twenty miles from the defendant, or where the cause of action did not arise wholly or in some material point within the jurisdiction of the Court within which the defendant dwells or carries on his business at the time of the action brought or where any officer of the County Court shall be a party, except in

(1) 33 L. J. Ex. 41.

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respect of any claim to any goods and chattels taken in execution of the process of the Court, or the proceeds or value thereof, may be brought and determined in any such superior Court, at the election of the party suing or proceeding, as if this Act had not been passed."

The action having been brought in the superior Courts the point that had to be considered was whether the plaintiff dwelt more than twenty miles from the defendant. It does not appear to have been doubted in the discussion before the Court that the word "dwells" did not apply to a corporation. The case was heard by a court consisting of Pollock, C. B., Bramwell, B., Channell, B., and Pigott, B. Bramwell, B. said :—

"The question here is, whether the plaintiffs dwell more than twenty miles from the defendant. The plaintiffs are a corporation, and it appears that word has been applied to corporations, by saying they dwell where they carry on their business. The question is, where did this corporation carry on its business?"

The Court decided that in that case the corporation carried on its business at Keynsham where they made and sold the articles for the price of which action was brought.

This case was referred to in *Aberystwith Promenade Pier Company (Limited) v. Cooper*, (1). This case was decided by four Judges presided over by Cockburn, C. J. The court had to interpret the same section of the County Courts Act and held that the company dwelt where its representatives were to be found. The question that the word "dwell" did not apply to companies was never debated. It was never thought that such a debate was possible. The question that the court had to decide was what was the place where the company should be held to dwell,

(1) 35 L. J. Q. B. 44.

i.e. the place of dwelling was the place that had to be determined by the Court. That the company dwelt at one place or other places was never doubted.

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The next point to decide is whether the plaintiff can bring the suit in Delhi. Mr Dev Raj Narang, who is the Managing Director of the managing agents of the plaintiff Company, was examined as a witness. In course of his statement he said that the head office of the plaintiff Company was at Lahore. The office of the Company closed on the 8th or 9th of August 1947, at Lahore on account of riots. After that the plaintiff Company started its business at Delhi in May 1948, and even now its head office is at Delhi. The plaintiff Company has been registered as a displaced person at Delhi. In cross-examination he stated that it was the Board of Directors who decided to open the plaintiff Company's office at Delhi. The plaintiff Company was not registered at Delhi under the Indian Companies Act. Bulaqi Chand, who is, the Office Superintendent of the plaintiff Company stated that the administrative office of the plaintiff Company has been at Delhi since December 1947. Previous to this it was at Lahore and due to partition it has shifted to Delhi. In cross-examination he stated that the plaintiff Company is a public limited company and is registered under the Indian Companies Act. A certificate of registration issued by the Registrar was produced at the time of arguments and reads thus :—

“ Certified that Steel and General Mills Company Limited is registered in East Punjab under the provisions of Indian Companies Act, VII of 1913, as a public company limited by shares. The registered office of the Company is now at Amritsar and it was transferred from Lahore before the 15th August 1947. The Company has its administrative office at 10, Cavalary Lines, Delhi. ”

This certificate bears the date 22nd of December 1948.

In my opinion it is clear from this evidence that the administrative office of the plaintiff Company is

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at Delhi. It was objected that this certificate was produced at the time of arguments and was produced too late, but the evidence regarding this certificate had already been given by Bulaqi Chand, the Office Superintendent, P. W. 3, and in my opinion the late production of this certificate has not prejudiced the case of the defendant Assurance Company in any way. If the administrative office of the plaintiff Company is at Delhi then applying the test given by Foote the company would be residing at the place where the brain which controls the operations of the company is situate and that place would be Delhi. I am supported in this connection by the authority of the case of *Tulika Basavaraju v. Parry and Company*, (1), the case which was mentioned by the trial judge in his judgment. See page 321 and the following pages.

In *De Beers Consolidated Mines, Limited v. Howe* (2) Lord Loreburn, L. C., is reported to have said as follows at page 458 :—

“ In applying the conception of residence to a company, we ought, I think, to proceed as nearly as we can upon the analogy of an individual. A company cannot eat or sleep, but it can keep house and do business. We ought, therefore, to see where it really keeps house and does business. * * * The decision of Kelly, C. B., and Huddleston, B., in the *Calcutta Jute Mills v. Nicholson and the Cesena Sulphur Co. v. Nicholson*, (3), now thirty years ago, evolved the principle that a company resides for purposes of income-tax where its real business is carried on. Those decisions have been acted upon ever since. I regard that as the true rule, and the real business is carried on where the central management and control actually abides.”

(1) I. L. R. (1894) 27 Mad. 315.

(2) 1906 A. C. 455.

(3) (1876) 1 Ex. D. 428.

This decision of Lord Loreburn, L. C., was approved in *M/S Steel and Swedish Central Railway Company, Limited v. Thompson*, (1), Lord Loreburn's decision was followed in *Egyptian Delta Land and Investment Company, Limited v. Todd*. (2).

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As the administrative office of the plaintiff Company is at 10-A, Cavalry Lines, Delhi, and that is the place where the central management and control of the Company actually abides, and real business is carried on, I hold that the Company is resident in Delhi. In my opinion, therefore, the plaintiff satisfies all the requirements of sections 3 and 4 of Act XLVII of 1948 and I would hold that on this fact alone the plaintiff had the right to bring the suit in Delhi.

The second point which was urged by the plaintiff was that a part of the cause of action arose in Delhi. In support of that Mr Dev Raj Narang, P. W. 1, stated that the claim of the plaintiff Company was put in Delhi, where the office of the defendant Assurance Company was in those days. Mr Deva, P. W. 2, stated that he was the principal agent of the defendant Assurance Company and his circle was from Delhi to Peshawar. Previously his office was at Lahore but now it is in New Delhi. He stated that he received information about the loss at Delhi. In cross-examination he stated that he was registered as principal agent of the defendant Assurance Company in the Calcutta Accident Insurance Association and that he did not know whether before the partition of the country the Hindustan Trust Ltd. was the principal agent of the defendant Assurance Company or not, nor did he know if it is the principal agent or not since the partition up to date. In rebuttal of this evidence the defendant Assurance Company produced Mr Mukerjee, its Branch Superintendent, as a witness. He stated that there was no office of the defendant Assurance Company in Delhi before February 1950. Mr Deva was an ordinary agent of the Com-

(1) 1925 A. C. 495.

(2) 1929 A. C. 1.

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pany to secure fire and riot work. He was their principal agent for insurance work in connection with motor and other accidents, but was not their principal agent for fire and riot work and according to rules no person can be appointed as principal agent of any company for fire and riot work at a distance of over 50 miles from Calcutta. He stated that the Hindustan Trust Limited was the principal agent of the defendant Company for motor and miscellaneous work and is so even now. He further stated that Mr Deva was appointed as principal agent for Northern India. Delhi Province was not included in it. Ordinary agents like Mr Deva had no authority from the Company to receive claims, etc. In cross-examination he stated that the chief office of the defendant Assurance Company was in Bombay and its branch office was in Calcutta and this was so even before partition of the country. All the claims of Northern India and Delhi were settled in Calcutta. He further stated that he could not say whether or not Mr Deva secured any business from Delhi Ilaga after partition, but he has also been working similarly in Delhi as agent of defendant Assurance Company. If any claim was given to Mr Deva in Delhi the defendant Assurance Company settled the same, but he had no authority on behalf of the Company to receive it. The Company did not return the same. From this evidence it is not quite clear whether the defendant Assurance Company has an office in Delhi or not.

One has to bear in mind the distinction between the office of the Company and the office of someone who does work for the Company. In *Badcock, v. Cumberland Cab Park Co.* (1), Sterling, J., said as follows at page 368 :—

“ Is it established in this case that the Company which is the defendant to this action carries on a principal part of its business here in London? What is the business of this Company? It is called the Cumberland Cab Park Company, and the main

(1) (1893) 1 Ch. 352.

business and object of the Company is to carry on the business of an hotel in the State of Tennessee in America. It has unquestionably an agent in London, namely, Mr Charles Barclay Holland. Mr Holland has an office in the city of London, and he has put up the name of the Company upon that office; and, more than that, that office of his is described in various circulars which have been put in evidence as 'the London office of the Company.' It is sworn by Mr Holland, and I see no reason to doubt his statement, that the office does not belong to the Company but belongs to himself. It is in evidence, however, that some of the office furniture at least is the property of the Company. Now, upon that I make this remark, that it is not enough that the Company, a foreign Company, should possess property in this country. That is quite clear. You must prove far more than that. You must prove that it is carrying on business in such a way as to be resident in this country."

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And it was held in this case that service on Mr Holland was not service on the Company.

In the case of the *Princessee Clementine*, (1), Corell Barnes, J., said at P. 21 :—

"In a popular sense, no doubt, the business of the defendant corporation is carried on by the corporation in England, but I do not think that this is so in the eye of the law. It seems to me that the business carried on in this country is that of an agency for the defendant corporation, and that this agency is conducted by the firm of Barr, Moering & Co. It follows, therefore, that the person upon whom service was made was

(1) (1897) P. 18.

the servant of that firm, and not the servant of the corporation."

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This case was followed in the case of *La Bourgogne*, (1), but the facts of the latter case were different from the facts of the earlier case. In this case it was said on P. 15 :—

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"The Company is carrying on business here in such a way as to constitute residence in this country ; and, therefore, the proper person to be served under the rule is the person managing the business, the chief officer, that is, M. Fanet."

This case was upheld in appeal by the House of Lords in (1899) A. C. 431.

In the case of *Dunlop Pneumatic Tyre Company Limited v. Action Gesellschaft Fur Motor Und Motorfahrzeugbau Vorm Cudell & Co.* (2), which was before the Court of Appeal, Collins M. R. said at pages 346-347. :—

"It has been held in a number of cases, beginning with *Newby v. Van Oppen*, L. R. 7 Q. B. 293, and ending with the case of *La Bourgogne*, (1899) A. C. 431, that the true test in such cases is whether the foreign corporation is conducting its own business at some fixed place within the jurisdiction, that being the only way in which a corporation can reside in this country. It can only so reside through its agent, not being a concrete entity itself ; but, if it so resides by its agent, it must be considered for this purpose as itself residing within the jurisdiction. In several of the cases decided on this subject the difficulty has been to determine whether the business carried on by an agent at a certain place within the

(1) (1899) P. 1.
(2) (1902) 1 K. B. 342.

jurisdiction was the business of the Com-
 pany itself carried on by that agent as re-
 presenting them, or was really the busi-
 ness of the agent. With regard to that
 point very nice questions of fact have in
 some cases arisen."

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I doubt whether in the case with which I am dealing it can be said that there was any branch office of the defendant Assurance Company in Delhi or that Mr Deva was managing that office or was an officer or chief officer of the defendant Assurance Company.

Having regard, however, to my decision on the first point I would hold that the suit was properly brought in Delhi and would accept the appeal and direct the trial Judge to proceed with the case according to law. The plaint and other papers will be returned to the trial Judge and parties are directed to appear before him on 21st of January 1952.

Editor's Note.

This point was also considered in R. F. A. 159 of 1951 decided on the 28th December 1951 and the same view adopted. This decision is being printed in preference to the above decision as it is more detailed.