

(1906) 06 BOM CK 0010

Bombay High Court

Case No: Civil Application No. 325 of 1906

Narayan Shankar Rajwade

APPELLANT

Vs

The Secretary of State for India

RESPONDENT

Date of Decision: June 25, 1906

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Section 17(c)

Citation: (1906) 8 BOMLR 543

Hon'ble Judges: Lawrence Jenkins, J; Beaman, J

Bench: Division Bench

Final Decision: Dismissed

Judgement

Lawrence Jenkins, K.C.I.E., C.J.

A suit has been brought against three defendants in the District Court of Poona.

2. Two of these defendants at the time of the institution of the suit were actually and voluntarily residing within the local limits of the Poona Court.

3. The third was not.

4. Since the institution of the suit, an application has been made on behalf of the plaintiff for leave u/s 17(c) of the Civil Procedure Code.

5. That leave was granted and it is to the order granting that leave that exception is now taken by the defendant affected thereby. He maintains that leave could not be granted after the institution of the suit.

6. No doubt the words of the Section are susceptible of that meaning, but the concluding provision as to acquiescence makes it clear that a defect at the institution can be subsequently cured, for obviously there could be no acquiescence at the times of the institution. And so we think, there is no necessity for reading the words of the proviso in such a way as to say that the leave of the Court must have

been first given. Such a conclusion would lead to great inconvenience, and possibly hardship, as in cases where the plaintiff honestly and reasonably believed that all the defendants were residing within the jurisdiction. Therefore, we hold that the leave, though subsequent, was good and the rule must be discharged with costs.