M.R.O. 1—30,000—16-10-29.

MADRAS RECORD OFFICE.

Government of Madras.

Political **DEPARTMENT.**

G.O. No. 980	Press ~~Mis.~~
Dated 20. 11. ~~19~~ 1857	

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27/11/57

No. 15. From CLEMENT DALE, Esq., Government Pleader, Sudr Udalut; to EDWARD MALTBY, Esq., Acting Chief Secretary to Government, dated Madras, 5th November 1857, No. 113.

SIR,

Para: 1. I have the honor to acknowledge the receipt of Extract from the Minutes of Consultation, noted in the margin, and to report for the information of the Right Honorable the Governor in Council, that I have prepared a Petition of Appeal from the 2 Orders passed by the Civil Court, referred to in Mr. Phillips' letter to my address; but previously to the Sudr receiving it, it is requisite that I should lodge a copy of the order passed by the Subordinate Court on the 10th July last; and that I have requested Mr. Phillips to furnish me with a certified copy of that order.

Minutes Consultation, 5th October 1857, No. 849, Political Department.

2. I do myself the honor of enclosing copies of the several orders which accompanied Mr. Phillips' letter.

3. In the order passed on the 27th July 1857, the Subordinate Judge remarks, "This "Petition has been previously presented, and on its first presentation the Government Vakeel "was informed that it could not be received, as the reception of Petitions relative to the conduct "of Suits is prohibited by the 14th para: of the rules of procedure of the Courts." This was the first intimation I had had of the Subordinate Judge having alleged that as a ground for refusing to receive that Motion (or Petition;) on turning to the letter which Mr. Phillips addressed to Government under date the 30th June 1857, No. 193, I find it stated that the Subordinate Court had not recorded its grounds for the non-acceptance of the Motion otherwise than by a Note in Pencil on the Motion itself, thus "whether the pleadings are in accordance with the "rules, is a point for the Court alone to consider; the reply does not transgress the rules as "much as the answer does." Now assuming that the Subordinate Judge has correctly stated the facts in his order of the 27th July, it appears to me the Government Vakeel has been very remiss, in not having informed Mr. Phillips at the time of those being the grounds on which the Court refused to receive the Motion.

4. The Government Vakeel having omitted to report to Mr. Phillips such a ground of objection (if then made by the Subordinate Judge) is, as I submit, the less excusable, as in the letter which I had the honor to address to Government under date the 26th May 1857, No. 52, para: 4, I had suggested this objection, and had pointed out that if the Motion were objected to, on the ground that the application should be made orally, the Vakeel should move accordingly, taking the draft Motion prepared by me as a guide for the grounds on which he should move. Moreover I again pointed out the same course, in the letter I addressed to Government under date the 10th July 1857, No. 72, para: 5.

5. If, therefore, the Subordinate Judge is not in error in the statement inserted into his order of the 27th July 1857, it appears to me the Government Vakeel has made a grievous error in persisting to present the written Motion, and has placed the Government in a false position by such a course; and still more so, by appealing against that part of the Subordinate Judge's order of the 27th July 1857, which had reference to his refusal to admit the written Motion; as a guide for the course the Government Vakeel should pursue, I in my letter to Government, dated the 10th July 1857, No. 72, para: 3, distinctly pointed out, that if the Subordinate Judge "does not allege as his reason that the application should be made orally," I would advise that a Motion be presented to the Civil Court, &c. It appears to me that those instructions were too clear to admit for a doubt, that if the Subordinate Judge should allege (as he has done in his order of the 27th July) as his reason for refusing to receive the Motion, that the application should be made orally, then that no Motion on that subject should be presented to the Civil Court, morover in para: 5 of that letter I expressly say "if the Subordinate Judge should persist in his refusal to receive the Motion, and should allege as his reason that the application should have been made orally, I would recommend that the course pointed out in my letter, dated the 26th May 1857, No. 52, para: 4, should be adopted." Assuming therefore that the Government Vakeel had my instructions communicated to him, it does appear to me that he has evinced a great want of care and discretion, and has laid himself open to very severe animadversion.

6. Then with reference to the Extract from the Proceedings of the Subordinate Court, under date the 2nd September 1857, I find from them, that the "intimation" made by the Subordinate Court in respect of the answer which is referred to in Mr. Phillips' letter of the 22nd July 1857, No. 197, was a requisition by the Court for an explanation under the provisions of Regulation XV of 1816, Section 12; had the Government Vakeel stated this to Mr. Phillips, I should have been able to have advised the explanation which should have been given; and although I, in my letter to Government under date the 11th August, No. 79, pointed out that it had not been stated whether the "intimation" which Mr. Phillips referred to, was an order passed by the Subordinate Judge, no information is afforded on the subject till the 29th September. Had the Government Vakeel in July, or on my letter of the 11th August, explained the real state of the case, I would have recommended that the Subordinate Judge should have been informed that 2 lines of defence were intended by the paras: he referred to; and that it should have been urged on the notice of the Subordinate Judge, that it was competent for the Defendants to set up both lines of defence.

7. From the Subordinate Court's Proceedings of the 2nd September 1857, his Lordship in Council will observe, that the explanation was required by 3 several orders on the 18th July, 27th July and 8th August: of these orders no copies or any intimation (except Mr. Phillips' letter of the 22nd July) have reached me. His Lordship in Council will moreover observe by those Proceedings, that the Court determined that if the explanation required was not furnished on the following Saturday, (the 5th September) the Court would proceed to put in force the latter part of Clause 3rd, Section 12 of Regulation 15 of 1816. The copy of this Order did not reach me till the 29th September, of course too late then to do anything; and whether the Subordinate Court has carried out the course threatened, or what has since been done, has not been communicated to me.

8. I fear nothing can be urged in extenuation of the Government Vakeel, for withholding from the Subordinate Court the explanation required; for, if required under the Regulation 15 of 1816, the Subordinate Judge was authorised in making such a requisition for his information, yet it does appear to me that if the Subordinate Judge considered it right that further time should have been allowed to the Vakeel, 3 days was too short a time, the more especially when it is borne in mind that Mr. Cherry, the principal Defendant, was then resident at so great a distance.

9. With the explanation thus afforded by the copies of these Orders, I am of opinion that the Order of the Civil Judge, dated the 1st September 1857, should not be appealed against; I therefore submit my opinion for the sanction or directions of his Lordship in Council; but I would still advise that an appeal be presented against the Order of the 29th August 1857, with the view of bringing before the Court of Sudr Udalut in a legitimate shape, the conduct of the Subordinate Judge in pertinaciously setting at naught the Regulations and Rules of procedure, by his admission of the Replication, and retaining it on his file, after the irregularity has been pointed out, as that Court may think it desirable to draw attention of all Judges to these Rules, and calling on them to insist on a strict adherence to them for the future.

Letter from Government Pleader; to Acting Chief Secretary, 25th August 1857, *No.* 87.

10. With reference to the letter I had the honor to address to you as noted in the margin, I now have the honor to state for the information of his Lordship in Council, that on the 22nd Ultimo, the Court of Sudr Udalut issued a Circular, stating that they had found some modification of their Circular instructions of the 10th August last, was necessary, in order to provide for the timely correction of errors, which if allowed to remain unrectified, would eventually cause much unnecessary loss of time, and needless expence to the parties, and they resolved that where it appeared on the face of the interlocutory Order appealed from, that it had manifestly been passed in contravention of some Legislative Enactment, or Rule of Procedure, or established practice of Court, it should be competent to the Appellate Court in such cases, but only in such cases, to hear and dispose of the matter of the Appeal. Thus the main object which was contemplated, in advising the Proceedings adverted to in previous correspondence on this subject, has been attained, and this would have rendered any further steps unnecessary, had not the Subordinate Judge of Combaconum refused to take the Replication off the file.

(Signed) CLEMENT DALE,
Government Pleader.

COPIES.

Extract from the Proceedings of the Sub-Court of Combaconum under date the 27th July 1857.

O. S.—No. 29 of 1856.

Government Vakeel Soobbayar applies to the Court to receive a Petition pointing out irregularities in the reply and objecting to the reception of it by the Court. This Petition has been previously presented and on its first presentation, the Government Vakeel was informed that it could not be received as the reception of Petitions relative to the conduct of Suits is prohibited by the 14th para: of the Rules of procedure of the Courts, and the Petition in question had reference to the conduct of the Suit all such applications should be made orally and Recorded in the Diary as prescribed by the Rule referred to. On the occasion of his first presenting the Petition, the Government Vakeel stated that he was instructed, if the Court would not receive the Petition, to File the rejoinder which he accordingly Filed and the Defendants have been called upon for explanation as to part of the answer which is especially wanting in precision and calculated to mislead the Court and the defect of which was overlooked when the answer was Filed. When this explanation is received, the Court will proceed to consider the question of Jurisdiction mooted in the answer. The Court is of opinion that it is only for the Courts to take notice of irregularities in the Pleadings and the present case, the attention of the Court was attracted to severval irregularities in the answer which, acting strictly by Rule, would have subjected it to be returned, but considering the trifling nature of the Suit and the desirableness of bringing the Pleadings to a speedy close and that the irregularities were not such as to be injurious to the interests of the Plaintiff they were passed over, the more especially as it was probable that were the answer returned, considerable time elapse ere it would again be presented in due form, it having been apparently drawn up at Madras.

The reply was given in containing certain irregularities to which similar but certainly not equal indulgence was conceded by the Court.

The irregularities on either side are not such as will interfere with a clear perception of the issues when the explanation of the Defendants is received, meantime as the rejoinder has been given in by the Defendants and the Pleadings closed the Court sees no reason for protracting the Proceedings by throwing out the answer and reply and refuses therefore to receive Defendant's Petition or consider his oral application made in lieu of the Petition.

(True Extract.)

(Signed) L. C. INNES,
Subordinate Judge.

Extract from the Proceedings of the Civil Court in the Zillah of Combaconum, under date the 29th August 1657.

M. P.— No. 1199 of 1857.

Read Petition presented on the 27th Instant, by Soobbayar Vakeel on behalf of J. W. Cherry, Esq., Collector of Tanjore, 1st Defendant in O. S., No. 29 of 1856, on the File of the Subordinate Court appealing from an order of the Sub-Judge, dated 27th July 1857, refusing either to reject the reply or to entertain a Motion or oral representation pointing out the irregularities therein.

ORDER.—1. The Civil Court has not the power of interfering with any interlocutory Order which the Sub-Court may pass in respect to the conduct of a Suit pending before it, this has been recently pointed out by the Court of Sudr Udalut in their Circular Proceedings of the 10th August 1857. So far therefore as the order refusing to reject the reply is concerned the Civil Judge cannot interfere in respect to the Sub-Judge having refused to entertain the Motion pointing out irregularities in the reply the Civil Judge observes that under the 14th Rule for Pleadings any representation that the Defendant had to make in respect to the reply being inadmissible should have been made orally by the Vakeel and not by Motion.

2. The Appeal is dismissed.

Ordered that Extract from these Proceedings be granted to the Petitioner on his application.

(True Extract.)

(Signed) G. T. BEAUCHAMP,
Civil Judge.

Fort Saint George, Political Consultation, 24th November 1857.

Extract from the Proceedings of the Civil Court in the Zillah of Combaconum, under date the 1st September 1857.

M. P.—No. 1204 of 1857.

Read Petition presented on the 29th August 1857, by Soobier Vakeel on behalf of H. D. Phillips, Esq., Collector of Tanjore, 1st Defendant in O. S., No. 29 of 1856, on the file of the Sub-Court appealing from an order of the Sub-Judge, dated 10th July 1857, requiring explanation from the Defendants on certain points stated in their answer.

ORDER.—The Civil Judge cannot interfere with any interlocutory orders passed by the Sub-Judge in respect to the conduct of Suits pending before him (see Extract Proceedings of the Court of Sudr Udalut, 10th August 1857.) He would observe however that had the Petitioner informed the Sub-Judge that he declined to elect one of the pleas, but intended to press both, the delay that this Appeal has caused would in all probability have been obviated.

Ordered that Extract from these Proceedings be granted to the Petitioner on his application.

(True Extract.)

(Signed) G. T. BEAUCHAMP,
Civil Judge.

Extract from the Proceedings of the Sub-Court of Combaconum, under date the 2nd September 1857.

O. S.—No. 29 of 1856.

The Vakeel for 1st Defendant not having furnished the explanation required by the orders, dated 18th July, 27th July and 8th August, and stating that he is still unprepared to afford the explanation required, the Court imposes on Defendants a fine of 8 Annas being ½ of the institution fee under Clause 3rd, Section XII, Regulation XV of 1816. Further time, until the Civil Court to be held on Saturday 5th is granted. Ample indulgence has been shown Defendants, and no further time will be conceded, should the explanation required not be furnished on that date, or good reason shewn why it should not be given, the Court will proceed to put in force the latter part of Clause 3rd, Section XII of Regulation XV of 1816.

(True Extract.)

(Signed) L. C. INNES,
Subordinate Judge.

(True Copies.)

(Signed) CLEMENT DALE,
Government Pleader.

No. 16. ORDER THEREON, No. 980 ; dated 20th November 1857.

Ordered that copy of Mr. Dale's letter and of its enclosure be communicated to the Acting Commissioner of Tanjore.

The Government approve the course suggested in para: 9 of the letter.

The Acting Commissioner will take such notice, as he thinks called for, of the conduct of the Government Vakeel.

Exd. J. A. Wilson

No 980.
Ordered that copy of Mr Dale's letter and of its enclosures be communicated to the Actg Comr. of Tanjore.

The Govt approve the course suggested in para 9 of the letter.

The Actg Comr will take such notice as he thinks called for of the conduct of the Govt Pleader Vakeel

Jur 68 1/2 George 2
20th November 1857

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