

A VISHAL BHARTEEYA CO. LTD.

v.

BALWANT CHARITRA (alias JOHNY)

B [SUPREME COURT, 1964 (Hammett Ag. C.J.), 13th December 1963,
21st January 1964.]

Appellate Jurisdiction

Practice and procedure—adjournment—discretion of trial court to grant or refuse.

C The respondent brought an action against the appellant company for wages and allowances, and recovered judgment for the sum of £60 in respect of the months of September, October and November, 1962. In putting forward its defence the secretary of the appellant company gave evidence and produced or identified a cash book, as a book maintained by the respondent, containing entries relied upon as proving payment of the respondent's wages for the three months in question. A subsequent witness of the appellant company admitted that the entries in the cashbook were not made by the respondent, but by a Mr. Maharaj who was also employed by the appellant company. The appellant company sought an adjournment in order to call Mr. Maharaj but, on objection by counsel for the respondent, the magistrate refused the application.

E *Held:* The need for Mr. Maharaj to give evidence did not arise unexpectedly but must have been foreseen had the case been properly prepared for trial. Whether to grant an adjournment was entirely within the discretion of the magistrate, who considered all proper matters, and no grounds had been shown why the Supreme Court should interfere.

F

Appeal from judgment of a Magistrate's Court.

A. *Lateef* for the appellant company.

G The respondent appeared in person.

The case is reported only insofar as the appeal was based upon the refusal by the magistrate of an adjournment.

HAMMETT Ag. C.J.: [21st January, 1964].

H The Plaintiff-Respondent's claim in the Court below was for arrears of wages, allowances and wages in lieu of notice as the Manager of the Defendant-Appellant Company's store in Sigatoka as follows:—

1. Wages for September, October and November 1962 at £20 a month.	£ 60. 0. 0	
2. Manager's Allowance from March to November 1962 at £5 a month.	45. 0. 0	A
3. Wages for December 1962 in lieu of Notice.	20. 0. 0	
	<hr/>	
Total	£125. 0. 0	B
	<hr/>	

In the course of his own evidence, the Respondent admitted that his salary was in fact £15 a month and not £20 a month as claimed and that his managerial allowance of £5 a month had been paid with his wages. His claim to one month's wages in lieu of notice was dismissed and he was awarded Judgment for a total of £60 in respect of wages and allowances for the months of September, October and November 1962. Against this decision the Respondent did not appeal. The Appellant Company has however appealed on a number of grounds. C

One of these concerns the refusal of the Court below to adjourn the hearing in order to allow the Appellant to call an additional witness. D

The remaining grounds of appeal are in effect particulars of the general ground that the decision is unreasonable and against the weight of the evidence.

I will deal first with the complaint that the Court below refused to grant an adjournment. E

After the Respondent's case was closed, the Secretary of the Appellant Company gave evidence and produced or identified a Cash Book as the Account Book maintained by the Respondent. In this book certain entries were shown upon which the Appellant Company relied for proof of payment of the Respondent's wages in the months of September to November 1962. The next witness was an accountant employed by the Appellant Company who admitted that the entries relied on were not in fact made by the Respondent at all but by another accountant employed by the Appellant Company, named Mr. Maharaj, who had not been called as a witness. The Appellant Company thereupon sought an adjournment in order to arrange for the appearance of Mr. Maharaj to give evidence for the Company. Counsel for the Respondent objected to any adjournment. F G

It is quite clear that the need to call Mr. Maharaj as a witness for the Company must have been foreseen and considered had the case been properly prepared for trial. The need for him to give evidence did not arise unexpectedly. It was a matter entirely within the discretion of the Magistrate whether he should grant an adjournment. From the record it is clear that he took into account the matters that ought properly be considered in the exercise of that discretion. No grounds have been shown why this Court should now interfere. H

A in the exercise of the discretionary power to grant an adjournment by the Court below and this ground of appeal must therefore fail.

On the merits I find one puzzling feature in this case. The Respondent was the Manager in sole charge of the Appellant Company's Sigatoka Branch. His duties included the collection of the day's takings and noting them in his cash book, and the payment of local bills. He remitted money from time to time to his Head Office in Suva and paid the wages of his staff and himself.

B Although he only claimed wages for September, October and November in his writ, when he gave his evidence he denied that he had in fact been paid any wages for August in addition. No explanation was sought or given by the Respondent why he did not claim his wages for August if he had not in fact been paid them.

C Again in his evidence in chief the Respondent, who admitted that it was his duty and practice to pay himself his own wages out of the store's taking, said he did not draw his pay for August, September or October because there was not enough funds for him to pay himself. This was before he was shown the Cash Book, which he maintained in his own handwriting and upon which he was cross examined.

D In cross examination he admitted that he himself had recorded in this cash book that he had in fact sent £50 to his Head Office in Suva in September 1962 and a further £27.17.8 in October. A study of the entries in the Cash Book maintained by the Respondent makes it abundantly clear that the total of his daily takings in August, September and October amounted to well over £500 a month, and in November to well over £300. In those months in addition to the amounts he admitted sending to Head Office, there are entries indicating he sent other sums amounting to well over £600 in all.

E It was not the function of the Court below, or for that matter of this Court, to analyse the Accounts kept by the Respondent, but on his own specific admission it is abundantly clear that his evidence that he was unable to pay himself his own salary in the months of August, September and October because he had not enough funds to do so, is patently false. The question which should have been considered by the Court below and must be considered now is "Why did the Respondent not pay himself his own wages in the months of August, September and October as he had been in the practice of doing and it was his duty to do when in fact he had ample funds with which to do so?"

F Again, is it reasonable to believe that the Respondent would have sent these sums to his Head Office without deducting therefrom his own salary? If he did fail to deduct therefrom his own salary and pay it to himself, what was the reason for this and why was it he gave a false reason in the course of his evidence? These matters do not appear to have been considered by the Court below.

G On the balance of the probabilities in this case, especially as in other respects the Court below had specifically held the Respondent was not an honest person, I am of the opinion that on the whole of

the evidence before it the decision of the Court below that the Respondent was not paid his wages in September, October and November was unreasonable and against the weight of the evidence.

A

The Respondent's appointment as Manager was terminated before the end of November 1962. He would not have been entitled to pay himself his own wages before the end of the month, and there is evidence that the Appellant Company did not pay them to him. In these circumstances he would be entitled to Judgment for his wages and allowance for November 1962, amounting to £20.

B

There is no appeal against the decision of the Court below on the claim for wages in lieu of notice, and I do not therefore feel able to consider that aspect of the case.

The appeal has succeeded in part.

The Judgment of the Court below is therefore set aside and in lieu thereof the Plaintiff-Respondent is given Judgment against the Respondent Company for £20 and costs in the Court below which I assess at a total of £15.15.0. I shall make no order for the costs of the appeal.

C

Appeal allowed in part on grounds other than the refusal of an adjournment.