

and negligence are of course relative concept, not absolute abstractions, but in the given facts and circumstances of this case as noticed above, the rashness on the part of the respondent does call for a deterrent punishment. To my mind, it is a fit case in which the substantial power vested in this Court under section 17(1) of the Act to disqualify an erring driver who earns his livelihood by driving motor vehicles and in the same process causes distress and misery to the dependants of the innocent victim, should be exercised. To me it appears just and proper that such a dangerous driver should be kept off the road at least for some time, I, therefore, declare that in addition to the sentence that has already been passed against the respondent, he is disqualified to hold a licence to drive a heavy motor vehicle, such as, a truck or a bus, for a period of five years from today. A copy of this order be also sent to the Licencing or Renewing Authority concerned.

H.S.B.

*Before P. C. Jain, J.*

FAQIR CHAND AND OTHERS,—*Appellants.*

*versus*

MUNICIPAL COMMITTEE, SULTANPUR LODHI AND  
OTHERS,—*Respondents.*

*Regular Second Appeal No. 286 of 1975.*

June 2, 1983.

*Punjab Municipal Act (III of 1911)—Section 81—Recovery of arrears of tax by a Municipal Committee barred by time—Such arrears—Whether could be recovered under section 81.*

*Held*, that section 81 of the Punjab Municipal Act, 1911 provides a summary procedure for the recovery of any tax, water-rate (rent) fee or any other money claimable by a Committee under the Act. On an application made by the Committee, a Magistrate having jurisdiction may recover the arrears claimable by a Committee by the distress and sale of any moveable property belonging to the defaulter. Under this section a summary procedure is provided for the recovery of certain categories of dues with the object of avoiding all complications involved in litigation. The provisions of this section cannot be construed to mean that even though the Municipal Committee had lost the remedy to recover the amount in a court

Faqir Chand and others v. Municipal Committee, Sultanpur Lohdi  
and others (P. C. Jain, J.)

of law, it still retained the right to recover it by invoking the coercive machinery. Section 81 of the Act only provides a special procedure for the recovery of the claimable money and does not constitute a source or foundation of a right to claim the money otherwise time barred. Consequently, it is held that the procedure prescribed under section 81 of the Act cannot be resorted to by a Municipal Committee for the recovery of the time barred dues.

(Para 6)

1. Surat Borough Municipality vs. Sarifa Karunnissa Begam Saheb, A.I.R. 1941 Bombay, 53.
2. Surat Borough Municipality vs. Sarifa Karunnissa and others, A.I.R. 1939, Bombay, 494.

DISSENTED FROM.

*Regular Second Appeal from the decree of the Court of Senior Sub Judge, With Enhanced Appellate Powers, Kapurthala, dated the 16th day of November, 1974, reversing that of the Sub Judge 1st Class, Sultanpur, dated the 20th day of June, 1972 and dismissing the suit of the plaintiffs with costs.*

Arun Jain, Advocate, for the appellants.

Naginder Singh, Advocate, for the respondents.

#### JUDGMENT

*Prem Chand Jain, J.—*

(1) Faquir Chand and others plaintiffs filed a suit for permanent injunction restraining the Municipal Committee Sultanpur Lodhi defendant from recovering the arrears of the professional tax on the allegation that the recovery of the amount in dispute had become time barred. The suit was contested by the defendant. The learned Subordinate Judge Ist Class granted a decree for permanent injunction in favour of the plaintiffs restraining the defendant from recovering the amount of tax as the same was barred by limitation.

(2) Feeling aggrieved from the judgment and decree dated 20th June, 1972, of the trial Court, the Municipal Committee defendant preferred an appeal. The learned Senior Subordinate Judge exercising the enhanced appellate powers upset the finding of the trial Court on limitation and held that the Municipal Committee could

recover the amount in dispute at any time and no question of limitation would raise.

(3) Dissatisfied from the judgment and decree of the learned Senior Subordinate Judge, Faqir Chand and others have filed the present Regular Second Appeal.

(4) The only question that needs determination in the present case is whether a right is created to realise certain categories of dues without any limitation of Time under section 81 of the Punjab Municipal Act, 1911 (hereinafter referred to as the 'Act'), which reads as under:—

“81. Recovery of taxes etc. (1) Any arrears of any tax, water-rate (rent) fee or any other money claimable by a committee under this Act may be recovered on application to a Magistrate having jurisdiction within the limits of the municipality, or in any other place where the person from whom the money is claimable may for the time being be resident, by the distress and sale of any movable property within the limits of his jurisdiction belonging to such person. The costs of such proceedings shall be recoverable from the defaulter in the same manner as the said arrears.

(2) An application made under sub-section (1) shall be in writing and shall be signed by the president, a vice-president or the secretary of the committee, but it shall not be necessary to present it in person.”

(5) It was contended by Mr. Arun Jain, learned counsel for the appellants, that section 81 of the Act only provided a special procedure for the realization of the arrears of any tax, water-rate (rent) fee or any other money claimable by a committee, that the said amount could be recoverable only if its recovery was not barred by the law of limitation and that any claim which was otherwise time barred could not be recovered by resorting to the procedure referred to in section 81 of the Act. In support of his contention, the learned counsel had placed reliance on *Kalu Ram v. New Delhi Municipal Committee and another* (1) and *New Delhi Municipal Committee v. Kalu Ram and another* (2). On the other hand, it was contended by Mr. Naginder Singh, learned counsel for the respondents, that the

(1) 1965 P.L.R. 1190.

(2) A.I.R. 1976 S.C. 1637.

Faqir Chand and others v. Municipal Committee, Sultanpur Lohdi  
and others (P. C. Jain, J.)

---

provisions of Section 81 of the Act were not subject to any period of limitation, that the Municipal Committee could recover arrears of unpaid taxes by issuing distress warrants under section 81 of the Act and that even if the remedy to recover arrears of such unpaid taxes was barred by limitation, then also the recovery of the same under the Act would legally be permissible. In support of his contention, the learned counsel placed reliance on *Surat Borough Municipality v. Sarifa Karunnissa Begam Saheb* (3) and *Surat Borough Municipality v. Sarifa Karunnissa and others* (4).

(6) After giving my thoughtful consideration to the entire matter, I find considerable force in the contention of the learned counsel for the appellants. As would appear from the terms of Section 81 of the Act, it provides a summary procedure for the recovery of arrears of any tax, water-rate (rent) fee or any other money claimable by a committee under the Act. On an application made by the committee, a Magistrate having jurisdiction may recover the arrears claimable by a Committee by the distress and sale of any moveable property belonging to the defaulter. Under this section a summary procedure is provided for the recovery of certain categories of dues with the object of avoiding all complications involved in litigation. The provisions of this section cannot be construed to mean that even though the Municipal Committee had lost the remedy to recover the amount in a court of law, it still retained the right to recover it by invoking the coercive machinery. Section 81 of the Act only provides a special procedure for the recovery of the claimable money and does not constitute a source or foundation of a right to claim the money otherwise time barred. Consequently I hold that the procedure prescribed under Section 81 of the Act cannot be resorted to by a Municipal Committee for the recovery of the time barred dues. In the view I am taking, I find full support from the judgment in *Kalu Ram's case* (supra) which has been affirmed by the Supreme Court in *New Delhi Municipal Committee's case* (supra).

(7) Coming to the judgments cited by the learned counsel for the respondents, I find that in the wake of my conclusion based on the Supreme Court judgment, with respect, I am unable to subscribe to the view enunciated therein.

---

(3) A.I.R. 1941 Bombay 53.

(4) A.I.R. 1939 Bombay 494.

(8) For the reasons recorded above, I allow this appeal, set aside the judgment and decree of the learned Senior Subordinate Judge Exercising the enhanced appellate powers and restore those of the trial Court. In the circumstances of the case, I make no order as to costs.

N.K.S.

*Before S. S. Sandhawalia, C.J. and D. S. Tewatia, J.*

MANOHAR LAL AND ANOTHER,—*Petitioners.*

*versus*

SURJAN SINGH AND ANOTHER,—*Respondents.*

Civil Revision No. 1550 of 1982.

May 3, 1983.

*Code of Civil Procedure (V of 1908)—Order 23 Rule 3—Defendant in a suit satisfying the claim of the plaintiff—No document in writing signed by the parties recording the satisfaction executed between the parties—Execution of such a document—Whether necessary—Order 23 Rule 3—Scope of—Words ‘in writing and signed by the parties’—Whether applicable to the first part of the Rule only.*

*Held*, that an analysis of Rule 3 of Order 23 of the Code of Civil Procedure, 1908 would disclose two distinct kinds of classes of compromises in suits. These parts can and indeed must be read separately and disjunctively. The first part of the rule visualises a lawful agreement or compromise arrived at out of the Court by the parties. It is this kind of agreement or compromise which is required to be in writing and signed by the parties. It is to this class, namely out of Court agreement and compromises that the words “in writing and signed by the parties” expressly apply. On a plain and grammatical reading of Rule 3, the requirement of — “in writing and signed by the parties” therefore appends itself only to the lawful agreements or compromises arrived at by the parties out of the Court. On the other hand, all cases where the defendant satisfies the plaintiff in respect of the whole or any part of the subject matter of the suit is a distinct class by itself. It has been provided for separately from the class of lawful agreements and compromises by the parties by the dividing line of the word ‘or’ designedly used by the legislature. Distinct