under all the circumstances of this particular case.

That being so, in my judgment, this application for leave to excuse the delay ought to be dismissed.

It is therefore, unnecessary to say anything on the merits of the application. Though we thought it right to hear Mr. Nilkant on that point, we have not thought it necessary to hear Mr. Murdeshwar in reply. As regards that, a point would arise as to whether the subject-matter of the suit amounted to Rs. 10,000 within the meaning of S. 110 of the Civil P. C. The contention of Mr. Nilkant is that the test is the detriment to be suffered by the defendants and that although the plaintiff himself may not recover more than Rs. 4,000, still there were several other sharers in the partnership, and the result of the accounts ordered by this Court might be that they would be entitled to recover other large sums from his cilents, the defendants, which in the aggregate would amount to Rs. 10,000.

On the other hand, Mr. Murdeshwar cited to us the case of *Hirjibhai* v. *Jamshedji* (7) to show that when you have a case brought in the Court of the Second Class Subordinate Judge, then it must be taken that the Subordinate Judge could pass a decree only up to Rs. 5,000. However, we do not propose to express any opinion on that interesting point. I only mention it to show that it has been not overlooked.

I would, therefore, dismiss the application for excusing the delay with costs, and, consequently, I would also dismiss the petition itself with costs.

Blackwell, J.—I agree.

R.D. *Application dismissed.*

(7) [1913] 15 Bom. L.R. 1021=21 I. C. 783.

A. I. R. 1927 Bombay 223

PATKAR AND BAKER, JJ.

Ahmedabad Cotton &c. *Co.*—Appellant.

v.

Bai Budhian Rajaram—Respondent.

First Appeal No. 162 of 1926, Decided on 17th December 1926, from the decision of the Commr., Workmen's Compensation, Bombay, in Application No. 22 B-5 of 1926.

Workmen's Compensation Act (1923), *S. 3—Death of workman caused through his act which was incidental to his work—His act was held to arise out of and in the course of his employment.*

Where a temporary hessian cloth cover was spread out under the roof to protect the cloth under manufacture from dust because of certain repairs of the roof of the weaving shed of a mill, a jobber in the weaving department, while trying to cut a portion of the cover to admit more light, got entangled in the belt and was killed.

Held: that the act of the deceased workman in removing the hessian cloth was incidental to his work and was done in the performance of his duty, and arose out of and in the course of his employment within S. 3. [P. 224, C. 2]

H. V. Divatia—for Appellant.

Ambedkar and *B. G. Modak*—for Respondent.

Patkar, J.—In this case one Kalicharan Nanu was employed as a jobber in the Ahmedabad Cotton Spinning and Manufacturing Company Limited, and died on November 30, 1925, as the result of an accident while employed in the weaving department.

Some time before the date of the accident the Mill authorities had commenced the work of replacing the corrugated iron sheets on the roof of the weaving department by wooden planks, and in order to protect the cloth, that was being manufactured from the dust that would fall from the roof a temporary hessian cover was put over that portion of the weaving shed where the work of replacing was actually being done. Two theories were advanced before the lower Courts as to how the accident happened. One was that while the jobber was putting the belt on the pully, the piece of the hessian cloth got entangled in the belt and in trying to remove that piece the deceased himself got entangled. And the other theory was that he went to cut a portion of the hessian cover in order to admit more light and the accident happened. The Commissioner has accepted the latter theory, and in his judgment he says:

> The jobber in question having discovered want of light tried to remove it or cut it so as to let light in. This work was really simple not involving any danger. Unfortunately, however, a portion of the cover got entangled in the belt (as the weaver says) and in trying to remove it the poor man was killed. A jobber in the weaving department is there to superivise the weavers and to help them in carrying on their work and to remove impediments in their way. I do not at all see how it could be said that if he tried to get more light for the weavers by cutting or removing the cover he was doing something which he was not employed to do.

Under proviso to S. 30 of the Workmen's Compensation Act 8 of 1923, we

have to take the finding of the lower Court as correct, and to see whether there is any substantial question of law involved in the case.

It is argued on behalf of the appellant that the injury which was caused to the workman in this case did not arise out of and in the course of his employment within the meaning of S. 3 of the Workmen's Compensation Act. It is urged that the work of removing the hessian cloth belonged to the engineering department and not the weaving department, and if the workman meddled with the work which was entrusted to the engineering department, the injury which was caused to the workman while removing the hessian cloth did not arise out of and in the course of his employment. If the words were strictly construed, it might be said that the removal of the hessian cloth did not arise out of and in the course of his employment, for that was the work entrusted to the engineering department. But if the Act was liberally construed, the injury caused to the workman can be said to have arisen out of and in the course of his employment.

In Willis's Workmen's Compensation (22nd Edn.), p. 40, it is stated :

> An act, though strictly not one which the workman is required by his employment to perform, may still be regarded as within the sphere of his employment if it is a reasonable or necessary thing to do under all the circumstances; unless it has been expressly...or impliedly... excluded from his employment, or is such as to constitute an added peril.

According to the evidence the removal of the hessian cloth was not attended by any peril. Erackshaw Kaikobad Dastur says in his evidence :

> Beyond telling the carpenters under me that to protect the cloth which was being manufactured on the looms from the dust falling, they should put hessian covers, I did not give any orders. No necessity of detailed orders was seen by me as that work of putting and removing the covers was done at a time when the Mill was not working. The work was so simple that I did not think it neceesary to entrust it to a particular man so that he may be held responsible for it.

In Ruegg's Workmen's Compensation (9th Edn.), it is said (p. 115) :

> If a workman is injured whilst doing his work which, although not strictly the work required of him by the terms of his contract, is yet such as a reasonable employer had he been present would reasonably be expected to acquiesce in the workman performing in the special circumstances (although strictly not an emergency), and if such work is for the employer's benefit, and such as the workman is competent to perform, then the workman in such a case is not outside the scope or sphere of his employment, and is within the protection of the Act.

In this case we have to consider whether the action of the workman was reasonable, necessary and incidental to the work which was entrusted to him. Some liberty must be left to the workman in order to perform his work efficiently. He was a jobber and was paid by piece work, and it was both his interest and duty to see that the work was done efficiently, and if want of light interfered with the efficiency of the work and the production of the cloth, it was his duty, if there was any impediment in the way, to remove it. If he thought that the existence of the hessian cloth interfered with the necessary light, it follows that the removal of the cloth was reasonable, necessary and incidental to the work entrusted to him. And the learned Commissioner has found that the jobber in the weaving department had to supervise the weavers and to help them in carrying on their work and to remove the impediments in their way. We think that the act of the workman in removing the hessian cloth in order to admit more light was incidental to his work and was done in the performance of his duty, and arose out of and in the course of his employment.

In Butterworth's Workmen's Compensation Cases, Vol. VIII, p. 56, the Court accepted the view of the County Court Judge who said:

> I find it was done in order to get over a difficulty which he encountered in carrying out the work which he was employed to do, viz. the driving of the motor-van, and that what he did was required to be done, and was honestly done in furtherance of the object which he was instructed to effect, and I hold that, in doing it, he was not acting outside the sphere of his employment.

We think that in this case the act of the workman in removing the hessian cloth was done for the purpose of removing the impediment in the way of the work with which he was entrusted and that the injury which was caused to the workman arose out of and in the course of his employment.

We, therefore, confirm the decree of the lower Court and dismiss this appeal with costs.

R.D. *Appeal dismissed.*