
(1910) 09 BOM CK 0003
In the Bombay High Court
Case No : O.C.J. Suit No. 401 of 1910

Bhaishanker Ambashanker Oza

APPELLANT

Vs

Mulji Asharam

RESPONDENT

Date of Decision : 10-09-1910

Acts Referred:

Citation : (1911) 13 BOMLR 480

Hon'ble Judges : Robertson, J

Bench : Single Bench

Judgement

Robertson J.

1. This is a summons whereby the next friend of the plaintiff is called upon to show cause why he should not be made to deposit in Court such sum as the Honorable Judge may deem sufficient as security for the first defendant's costs of this suit.

2. It appears that the next friend and the plaintiff are both residents outside the jurisdiction of the Court and do not own Immovable property in British India, and under those circumstances, it is urged, the next friend ought to be directed to give security for costs.

3. The decision in Bombay, which has the most bearing upon this point, is the case of Bai Porebai v. Devji Meghji ILR (1898) 23 Bom. 100. It appears from that case that it was laid down that except in exceptional cases neither an infant female plaintiff nor her next friend ought to be required to give security for costs. In his judgment, Sir Charles Farran says:

If, then, the next friend of an infant plaintiff and not the infant plaintiff himself or herself is and has always been liable for the costs of the suit, a provision that a woman shall not be imprisoned for debt gives rise to no inference that the Legislature intended in any way to change the practice as to a female infant plaintiff giving security for costs. We think, therefore, that except in exceptional

cases, the old practice ought still to be observed. The Advocate General urges that this ruling will permit of improper suits being filed by indigent persons as next friends of female infant plaintiffs. The same argument, if of weight, applies with equal cogency to the next friends of male infant plaintiffs. The answer to this appears to us to be that the Courts can be moved to stay a suit improperly brought on behalf of an infant and to remove an improper next friend of an infant and to substitute a proper person in his place.

4. The English practice is laid down in the case of *Hind v. Whitmore* (1856) 2 K. & J. 458 referred to by Sir Charles Farran. That was a case of a married woman, where she was actually suing in *forma pauperis*, and also deals with the case where she sues by a next friend. Vice-Chancellor Sir W. Page Wood says:

The circumstances which make a difference between the case of a *feme coverte* and an infant are, not only that a *feme coverte* selects her own next friend, but also that this Court is always anxious that cases in which infants are concerned should be brought to its notice, and it has a jurisdiction over suits by infants, which it has not in the case of suits by married women, to stay such suits if not for the infants' benefit, and can for that purpose avail itself of any impropriety on the part of the next friend in bringing the suit. But it is not so in the case of a married woman. Her suit must go on however impossible it may be for the defendant to have any remedy for costs, in case they should be ordered to be paid to him.

5. Cases will be found collected in the Annual Practice for 1909, Vol. I, page 183, where it is said with regard to next friends:

Security for costs.-He (the next friend) is not obliged to give security for costs, although he may be impecunious and a stranger but if ho appeals and is insolvent he may have to give security.

6. Therefore, it appears that the practice is that in the case of an infant it is not desirable to run any risk of stopping the suit filed on behalf of any infant, which may be a proper suit to bring, merely because of some inability on the part of the next friend to give security for costs, and the Courts have apparently considered that the interests of other parties to the suit are sufficiently protected by the power they have in a proper case of moving the Court either to stay the suit as not being for the benefit of the infant, or if there is a just cause other than the poverty of the next friend, to have him removed.

7. Therefore, it seems to me that I should be departing from the principles and practice both of this Court and of Courts in England, if I were to make any order directing security to be given in this case.

8. Summons will, therefore, be discharged.

9. Costs costs in the cause.

10. Counsel certified.