
(1923) 08 MAD CK 0010
In the Madras High Court

B.V. Satyanarayana Varaprasad Rao

APPELLANT

Vs

B.V. Bhashyakarulu Rao

RESPONDENT

Date of Decision : 18-08-1923

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 116

Citation : AIR 1924 Mad 399

Judgement

1. This is an application for leave to appeal to the Privy Council, against an order passed by one of us, sitting as a single Judge, u/s 116 of the CPC

and Section 107 of the Government of India Act. That order confirmed the order of the lower Court and dismissed the Civil Revision Petition filed

in this Court. The present petitioner, who was the petitioner in the Revision Petition has applied to us to grant him leave to appeal to the Privy

Council.

2. A preliminary objection is taken to this application, on the ground that Section 111, Civil Procedure Code, bars any such application. Section

111 says, notwithstanding anything contained in Section 109, no appeal shall lie to His Majesty in Council, among other things, from the decree or

order of one Judge of a High Court established under the Indian High Courts Act, 1861. This is manifestly an application for an appeal from such

an order. It is difficult to see how the petitioner can escape the obstacle placed in his way by this section. His learned Vakil says, however, that u/s

39 of the Letters Patent a right of appeal is given in all cases of final orders or decrees of this High Court to the Privy Council, and since the

amendment of the Letters Patent, whereby the right of appeal to two Judges from the judgment of a single Judge, sitting in revision, has been taken

away, this order, which was passed in such proceedings, has become final; and therefore he contends that he is entitled to ask for leave. Section

44 of the Letters Patent expressly provides that any provision in the Letters Patent can be altered or controlled by the legislation of the Governor-

General in Legislative Council; and such an enactment is the CPC and when there is express provision in that Code, we must hold that that

provision must be given effect to even if it is possible to bring the case under the general wording of Section 39 of the Letters Patent. In these

circumstances we have no other alternative, but to dismiss the application with costs.

3. Memorandum of costs will follow.