
(1933) 11 AHC CK 0026
In the Allahabad High Court

Churey Lal

APPELLANT

Vs

Firm Jagannath Sashi Nath and Others

RESPONDENT

Date of Decision : 22-11-1933

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 32 Rule 8(1)

Citation : AIR 1934 All 458(1)

Hon'ble Judges : Kendall, J

Bench : Division Bench

Final Decision : Allowed

Judgement

Kendall, J.—This is an application for the revision of an order of the Subordinate Judge of Agra, calling upon a next friend of some minor plaintiffs to provide security for costs. The application is made on the ground that the Court had no jurisdiction, and it must be admitted that there is no provision in the CPC for calling upon the next friend of minor plaintiffs to provide security for costs, though it is open to the Court to make an order after the hearing for costs against a next friend, and to call on a next friend to provide security in the event of his retiring : Order 32, Rule 4(4) and Order 32, Rule 8(1). I have not been referred to any authority of this or any other High Court for holding that a Court may call upon a next friend to provide security for costs. The question was considered in the case of Bai Porebai v. Devji Meghji (1899) 23 Bom. 100, where the Court went so far as to say that:

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.

2. The old practice referred to here, however, does not appear to be that of

demanding security for costs from a next friend and in the case of *Bhaishanker v. Mulji Asharam* (1911) 35 Bom. 339 the High Court refused to demand security from a next friend for the following reason:

The practice therefore seems to be that in the case of an infant it is not desirable to run any risk of stopping the suit filed on behalf of an 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.

3. In the present case the Court has apparently been influenced by the allegations made by the defendants that the minor plaintiffs are being financed by their next friend. If a man of wealth, who would be able to provide the security, the defendants will be amply protected by the power of the Court to direct him to pay costs at the end of the hearing. If however he is not a man of wealth and would be unable to provide security, then as has been pointed out by the Bombay High Court, it is undesirable to stay the proceedings merely on account of that inability. In other words the Courts have not accepted the principle that it is desirable to call on a next friend to provide security for costs, and as there is no provision under the rules empowering the Court to do so. I must hold that the order of the Subordinate Judge is without jurisdiction. I therefore allow the application with costs and set aside the order of the Subordinate Judge.