

(1935) 08 MAD CK 0044

In the Madras High Court

In Re: Magalam Govinda Rao

Date of Decision : 06-08-1935

Acts Referred:

Citation : AIR 1936 Mad 134 : (1936) ILR (Mad) 293 : 160 Ind. Cas. 1036 : (1935) 42 LW 941

Judgement

1. This petition arises out of S. A. No. 66 of 1933 which was dismissed by our learned brother, Madhavan Nair, J. After the dismissal of the

second appeal, the petitioner applied to the learned Judge, by C. M. P. No. 76 of 1935, for leave to file an appeal under the Letters Patent and he

dismissed it stating that he could not find any ground for granting the leave asked for. Another petition asking for review of this order was also

dismissed by him. The petition before us asks that we may grant leave to appeal against the judgment of Madhavan Nair, J., in second appeal,

"despite his Lordship's refusal to grant leave" in C. M. P. No. 76 of 1935. In the course of the argument before us the petitioner has suggested

that this may at least be treated as an appeal against the order refusing to grant leave. We do not see that on either ground we can grant the

petitioner's request.

2. The petitioner who himself argued his case before us admits that a decision of a Division Bench of this Court in Ramanayya v. Kotayya 1930 57

MLJ 398 is against him, but he contends that that judgment was given mainly on the authority of English cases and does not take note of the fact

that an order refusing to grant leave may be regarded as a judgment within the meaning of the 1st part of Clause 15 of the Letters Patent and

treated as appealable. The petitioner agrees that, so far as the decision in the second appeal is concerned it could not be made subject to a further

appeal except in accordance with the 2nd part of Clause 15. Neither Section 96 nor Section 100, Civil Procedure Code, will give him a right of

appeal from the decision in second appeal. Even if an order refusing to grant leave could be regarded as a judgment under the 1st part of Section

15, an order to a different effect by a Division Bench on appeal therefrom would not suffice to give him a right of appeal against the second

appellate decree, because under the second part of Clause 15 the second appellate decree will be appealable only on a certificate granted by the

Judge who heard the second appeal. The petitioner insists that the clause does not use the word "only," but it is difficult to see what other meaning

the clause could bear, when read in the light of the fact that from the 1st part of Clause 15 the judgment passed in the exercise of appellate

jurisdiction over subordinate Courts is excluded. There is no provision here similar to that contained in Section 75(3), of the Provincial Insolvency

Act, and other similar enactments, where the power to grant leave to appeal is conferred both on the original Court and on the appellate Court.

We see no reason to differ from the view taken by the learned Judge in *Ramanayya v. Kotayya* 1930 57 MLJ 398. The petition is accordingly

dismissed.