

(1961) 05 AHC CK 0007

In the Allahabad High Court

Case No : Civil Miscellaneous Application No. 1253 of 1961

Kalyan Singh

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 17-05-1961

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 45 Rule 13, Order 45 Rule 13(2), 151
Constitution of India, 1950 — Article 133(1), 226

Citation : AIR 1961 All 619

Hon'ble Judges : M.C. Desai, C.J.; Jagdish Sahai, J.; Bishambhar Dayal, J

Bench : Full Bench

Advocate : S.N. Kakkar, for the Appellant; K.B. Asthana, Junior Standing Counsel, for the Respondent

Judgement

M.C. Desai, C.J. (Concurring)

1. I had the advantage of reading the judgment of my brother Jagdish Sahai and I agree with him that the question should be answered in the negative and that the petitioner should pay costs of the respondents. Order 45, Rule 13 (2) (d) does not apply; I have given my reasons for this view in State of Uttar Pradesh and Others Vs. Mukhtar Singh and Others, and have very little to add. The words "give such other direction" must be interpreted as analogous to placing any party seeking the assistance of the Court under conditions and Clause (d) comes into operation when a party seeks the assistance of the court and then either conditions may be imposed upon him or such other direction as appointment of a receiver may be given.

The words "party seeking the assistance of the court" do not refer to the party to whom a certificate has been granted; granting the certificate is not granting him the assistance of the court. The clause comes into operation after a certificate has been granted and applies when after the grant of a certificate a party seeks the assistance of a court in one way or another. Here the petitioner sought the assistance of the court by seeking a certain interim relief and if the relief is

granted to him, it may be granted on conditions or subject to a direction respecting the subject matter of the appeal. Whether the interim relief should be granted to him or not is an entirely different matter not dealt with by the clause. The only clause that might apply is Clause (c), but the interim relief that is sought is not covered by it.

2. The order under appeal to the Supreme Court is an order refusing to issue certiorari to quash certain notifications published u/s 68-C of the Motor Vehicles Act and mandamus commanding the State and others not to interfere with the petitioner's right to ply his motor vehicle on a certain route. There arises absolutely no question of staying the execution of the order under appeal; an order refusing to issue certiorari or mandamus is not an order capable of execution.

What the petitioner really requires is a positive relief and not a relief against the operation of the order appealed from. Order 45, R. 13, does not empower the court to grant such interim relief. I further agree with my learned brother that the subject matter of appeal is the refusal of this Court to grant certiorari or mandamus; no practical direction in respect of this refusal can be granted.

3. I also agree with my learned brother that Section 151 C.P.C. also is not applicable.

4. I had the advantage of reading the judgment of my brother Bishambhar Dayal also, but with, great respect I do not agree with it.

Jagdish Sahai, J. (Concurring)

5. This Full Bench has been constituted to answer the following question referred by a Bench consisting of our brothers Beg and Srivastava:

"When a Writ petition under Article 226 of the Constitution has been decided and the necessary certificate for filing an appeal to the Supreme Court as required under the Constitution has been granted has this Court jurisdiction to grant interim relief to the party seeking to appeal to the Supreme Court under Order XLV, Rule 13 C.P.C. or u/s 151 of that Code or under any other provision of law?"

The question has arisen in the following circumstances:

6. Kalyan Singh (hereinafter called the petitioner) had a permit to ply his stage carriage on the Kanpur Bela Bidhuna via Chaubepur route (hereinafter referred to as the route). A notification u/s 68-C of the Motor Vehicles Act published in the U. P. Gazette dated 28-5-1960 was issued nationalising the route. Another notification dated 12-11-1960 was also published in the U. P. Gazette providing for cancellation of the petitioner's permit 15 days thereafter i.e., with effect from 27-11-1960.

The petitioner filed a writ petition in this Court challenging the two notifications mentioned above and prayed for a writ of certiorari quashing those notifications as also for a writ of mandamus commanding the respondents the State of U. P.,

the Regional Transport Authority, Kanpur, and the Secretary, Regional Transport Authority, Kanpur, not to interfere with his right to ply on the route. That petition was heard by a Division Bench consisting of our brothers Gurtu and Srivastava who dismissed the same.

Thereafter an application was made under Article 133(1)(c) of the Constitution of India praying that the case be certified to be a fit one for appeal to the Supreme Court of India. That certificate has been granted by our brothers Beg and Srivastava. Along with the application, under Article 133(1)(c) of the Constitution was made another application purporting to be under Order XLV Rule 13, C.P.C. with the following prayer:

"Wherefore it is respectfully prayed that suitable interim directions may issue to the respondents directing them not to interfere in any manner whatsoever with the appellant's right to ply his stage carriage on Kanpur Bela Bidhuna via Chaubepur route during the pendency of this Supreme Court Appeal."

7. The application was opposed on behalf of the respondents mainly on the ground that this Court had no jurisdiction to entertain the application. Our brothers Beg and Srivastava referred the case to a Full Bench in view of a conflict between two reported decisions of this Court i.e., *Girja Prasad Sunder Lal Vs. Divisional Forest Officer, Dudhi and Others*, and *State of Uttar Pradesh and Others Vs. Mukhtar Singh and Others*, . Before our brothers Beg and Srivastava it was contended on behalf of the petitioner that the application was maintainable under Order XLV, Rule 13 and Section 151, C.P.C. as also under Article 226 of the Constitution of India.

In view of the decision of the Supreme Court in the case of *The State of Orissa Vs. Madan Gopal Rungta*, the submission, that the application ? for interim orders could be entertained under Art Found 32 lines with R-E "[0-9][^<>]+ of the constitution" in d:\\Bare-Act\\October"07\\linking*.*.htm (cur dir "c:\\Eps12\\bin") d:\\Bare-Act\\October"07\\linking\\AI-1960\\u600021.htm: If the rules are referred to, they show that the decision of the Tribunal is clearly and manifestly incorrect. The petitioner has no other alternative remedy except to come up for relief from this Court under Art, 226 of the Constitution. In these circumstances, this is clearly a fit case where the Court should correct the error committed by the Election Tribunal in exercise of its powers under Article 226 of the Constitution.

d:\\Bare-Act\\October"07\\linking\\AI-1960\\u600030.htm: Article 137 of the Constitution has specifically invested the Supreme Court with the power to review any judgment or order passed by it, but the Constitution confers no such power on the High Courts. Nevertheless there is no provision in the Constitution debarring the High Courts from exercising a power of review, so that if such power is found derived from some other statute, a High Court will be entitled to review its judgments and orders. By virtue of Article 226 of the Constitution our High Court has framed Rules which apply to all proceedings and matters before

it. Chapter XXII of these Rules applies to directions, orders or writs under Article 226 other than writs in the nature of habeas corpus but these Rules are confined to procedural matters and are silent on the power of review. We have therefore to see if there is any other enactment which might be called in aid of the High Court.

d:\Bare-Act\October'07\linking\AI-1960\u600031.htm: "The order directing an accused to furnish his specimen writing u/s 73, Indian Evidence Act, is not hit by the provisions of Article 226 of the Constitution was withdrawn. We are now called Upon to decide whether the application for interim orders made by the petitioner is maintainable under Order XLV, Rule 13 or Section 151 C.P.C. R.26 of Ch. XXIII or the Rules of this Court makes the provisions of Order XLV C.P.C. applicable to those cases also which are not governed by the C.P.C. The said Rule reads as follows:

"26. In cases not governed by the Code the provisions of Order XLV of the Code shall, so far as may be and with such adaptations and modifications as may be found necessary, apply."

8. In view of that rule we have to, proceed on the footing that Order XLV, Rule 13 is applicable to final orders passed in a writ petition. The said provision reads as follows:

"13. (1) Notwithstanding the grant of a certificate for the admission of any appeal, the decree appealed from shall be unconditionally executed unless the Court otherwise directs.

(2) The Court may, if it thinks fit, on special cause shown by any party interested in the suit, or otherwise appearing to the Court,--(a) impound any movable property in dispute or any part thereof, or

(b) allow the decree appealed from to be executed, taking such security from the respondent as the Court thinks fit for the due performance of any order which the Supreme Court may make on the appeal, or

(c) stay the execution of the decree appealed from, taking such security from the appellant as the Court thinks fit for the due performance of the decree appealed from, or of any decree or order which the Supreme Court may make on the appeal, or

(d) place any party seeking the assistance of the Court under such conditions or give such other direction respecting the subject matter of the appeal as it thinks fit, by the appointment of a receiver or otherwise."

This rule is divided into two sub rules. Sub-rule (1) provides and declares that unless the Court otherwise directs the decree holder shall have a right to execute his decree unconditionally notwithstanding the grant of a Certificate. Sub rule (2) deals with the powers of the Court in connection with the decree sought to be appealed from in the Supreme Court of India.

Under this sub-rule a High Court can either On its own motion or on an application by an interested party in the suit impound any movable property in dispute or allow the conditional execution of a decree or stay the execution thereof subject to security being furnished or place the party seeking assistance of the Court under such conditions as it thinks fit respecting the subject matter of appeal or pass any other order respecting the subject matter of appeal as it thinks fit, as for example an order appointing a receiver. Order XLV, Rule 13 speaks only of decrees, but Rule 1 of that Order provides that unless there is something repugnant in the subject or context the expression decree shall include a final order. Though one of us (Desai, J. as he then was) in the case of State of Uttar Pradesh and Others Vs. Mukhtar Singh and Others, held that even by virtue of the provisions of Or XLV Rule 1 C.P.C. a final order passed in a writ petition could not amount to a decree within the meaning of Order XLV Rule 13 C.P.C., it is not necessary to go into that question because Mr. K.B. Asthana, learned Junior Standing Counsel has conceded that the final order passed in the petitioner's writ application would amount to a decree within the meaning of Order XLV Rule 13 C.P.C. In view of this concession I now proceed to consider whether or not Order XLV R, 13 can be applied to the facts of the present case,

9. It is true that the question referred to us is in abstract and a general one and not confined to the application made by the petitioner for interim orders in this case, but it is obvious that the answer has not to be given in abstract and in a general way but has got to be in the light of the facts of the case before us, and it appears to me that that was precisely what our brothers Beg and Srivastava wanted the Full Bench to answer.

Once a certificate has been granted under Art, 133(1)(c) of the Constitution of India this Court has already taken for granted that the order passed in the writ petition of the petitioner was an order passed in a civil proceeding. Rule 26 of Ch. XXIII of the Rules of the Court expressly makes the provisions of Order XLV Rule 13. C.P.C. applicable even to those civil proceedings which are not governed by the C.P.C.

It was conceded by Mr. K. B. Asthana the learned Junior Standing Counsel both before us as also before our brothers Beg and Srivastava that the order passed in the petitioner's writ petition was a decree within the meaning of Order XLV Rule 13, C.P.C. by virtue of the provisions of Rule 1 of that Order, Consequently, there would be no difficulty in answering the question in abstract by saying that whether or not Order XLV Rule 13 or Sec, 151. C.P.C., would apply to a case where a final order in a writ petition has been passed and a certificate that the case is a fit one for appeal to the Supreme Court granted, would depend upon the nature of the final order passed and the interim relief prayed for.

It appears to me that what our brothers Beg and Srivastava wanted us to answer was whether the particular application which the petitioner has made in this case for interim orders could be entertained either under Order XLV Rule 13 or Section 151, C.P.C. In other words, the question is whether the prayer that the petitioner

has made is covered by any of the clauses of Order XLV Rule 13 or can be granted u/s 151, C. P. C.

10. Learned counsel for the petitioner is relying upon Clause (d) of Sub-rule (2). He is not invoking the provisions of Clauses (a) to (c) of that sub-rule which obviously cannot apply to this case. It is therefore necessary to consider the precise scope of Clause (d). To my mind by means of that provision the Court has been given the power to put to terms any party who has sought its assistance i.e., who has applied to it for any orders in respect of the subject matter of the appeal.

It also gives the power to the Court to issue any other direction in respect of the subject matter of the appeal e.g., an order appointing a receiver of the property in dispute, or even to issue an injunction. It is however clear that it is only the party which is seeking the assistance of the Court which can be placed under conditions and not the other party. A Division Bench of this Court in the case of Lala Atma Ram Vs. Beni Prasad and Others while dealing with the scope of this clause observed as follows:

"It is further clear that Sub-rule 2(d) also cannot apply because that deals with the power of the Court in placing any party seeking the assistance of the Court upon conditions or giving other directions respecting the subject matter of the appeal. That sub-rule obviously refers to cases where a party is to be put to certain terms or where some order has to be made regarding the custody or disposal of the subject matter of the appeal."

11. I find myself in respectful agreement with this view. The petitioner's case cannot obviously fall in the first part of Clause (d). In effect what the petitioner has prayed for is that, notwithstanding the dismissal of his petition, he may be allowed to ply his stage Carriage on the route and the respondents be restrained from in any manner interfering with the petitioner's doing so as if the petition had been allowed.

Under the first part of Clause (d) the petitioner who was the party seeking the assistance of the Court could be put to such conditions as the Court thought fit and the plain meaning of the words used in that part of Clause (d) warrants the conclusion that the respondents in this case who are not the party seeking the assistance of the Court cannot be put under any conditions. The language is so clear that no authority is needed in support of this conclusion. However if one was accessary the decision of the Madras High Court in the case of Rajahmundry Electric Supply Corporation Ltd. Vs. The State of Madras, can easily be pointed out. It has now to be considered whether the petitioner's application can be entertained under the second Part of Clause (d).

12. While interpreting Clause (d) or any other clause of Sub-rule (2) of Order XLV, Rule 13 it must not be forgotten that the powers are given only for the purposes of interim protection of the Subject matter of the appeal. The Court has no jurisdiction to in effect modify, alter, reverse or supersede even temporarily

the decree or the final order already passed. If that cannot be done directly it can also not be done indirectly by means of a direction under Order XLV, Rule 13 (2) (d), C. P. C., for what is prohibited being done directly cannot be done indirectly (see *Madden v. Nelson and Fort Sheppard Rly.*, 1899 AC 626; and *Attorney General of Saskatchewan v. Attorney General of Canada* AIR 1949 PC 190).

It would be subversive to the scheme of the C. P. C. to hold that under the second part of Clause (d) a direction can be issued which may have the effect of temporarily setting aside the final order passed by this Court in the petitioner's writ petition and replacing it by another. A decree or final order cannot be altered, modified, set aside, or superseded by a mere direction; it can only be so done by another decree or final order. There is nothing in Order XLV, Rule 13 or any other provision of the C. P. C. which can lend support to the view that a direction can be given under Clause (d) which may have the effect of superseding a decree even though temporarily.

The scheme of the Code is that even though a certificate has been granted the decree or the final order remains live and with full force. Any order that can be passed under any of the clauses of Sub-rule (2) of Order XLV, Rule 13 must be confined within the restrictions of not in any manner changing even temporarily the decree or the final order passed. Whereas orders can be passed respecting the subject matter of the appeal and the operation of a decree may be stayed the nature of the order must be only to give interim protection; it cannot be an order completely different from and diametrically opposed to the decree or final order and one which may have the effect of bringing about a completely different result than the one provided for by the decree or the final order.

In other words no direction can be given which may make the defeated party the winning one and the winning one the losing party. It must also be remembered that the general rule is that after a final order or decree is passed the Court passing it becomes functus officio and that thenceforward, until set aside in appeal, the decree or final order remains unchangeable and cannot be interfered with by the Court that passed it except under circumstances expressly provided for in the Code e.g., by means of a review under Order XLVII, C. P. C.

The provisions of Sub-rule (2) of Order XLV, Rule 13 must be interpreted in the background of this basic rule. Sub-rule (1) of Order XLV, Rule 13 clearly provides that notwithstanding the grant of a certificate the decree-holder shall be entitled to execute his decree unconditionally unless the Court otherwise directs. The powers under Sub-rule (2) of that Rule must therefore, be read subject to these basic principles and it is not permissible in the name of a direction under Clause (d) to make an encroachment on the decree or final order itself,

13. Learned counsel for the petitioner has placed reliance upon the case of *Girja Prasad Sunder Lal Vs. Divisional Forest Officer, Dudhi and Others*, In that case firm *Girja Prasad Sunder Lal* had obtained on 8-4-1953 a theka for 7 years from

the Raja of Singrauli for collection of tendu leaves for manufacture of bins from a forest in Mirzapur district. The provisions of the U. P. Zamindari Abolition and Land Reforms Act, 1951, were extended to the area within which the forest of which Girja Prasad Sunder Lal had taken the theka for collecting tendu leaves was situated. The forest department, notwithstanding the theka in favour of Girja Prasad Sunder Lal, auctioned the right to collect tendu leaves in that forest.

One Rehari Lal made a bid of Rs. 2,000/-which was the highest at the auction and the forest department, therefore, authorises him to collect the tendu leaves whereupon Girja Prasad Sunder Lal filed a writ petition in this Court against the Divisional Forest Officer and the State of U.P. for a writ or direction to restrain them from interfering with his right to collect tendu leaves. An interim" order to that effect was issued the same day.

The petition was dismissed later on and an application was made under Article 133(1)(c) of the Constitution of India praying for a certificate that the case was a fit one for appeal to the Supreme Court, and a certificate was granted. The question that arose in that case was whether this Court could under Order XLV, Rule 13, C. P. C. pass the same interim Order which it had passed at the time when the writ petition was admitted. Our brothers Chowdhry and Upadhya held that such an order could be passed under Clause (d) of Sub-rule (2) of Order XLV, Rule 13, and observed as follows:

"So far as the applicability of the clause is concerned, the case does seem to belong to the second category since the petitioner prays for an injunction to restrain the respondents from interfering with its rights of collecting tendu leaves, which is the same thing as seeking a direction respecting the subject-matter of the appeal.

"This inference is confirmed by the fact that the particular portion of Clause (d) mentions appointment of a receiver as one of the directions which a Court may give respecting the subject matter of the appeal.

"Any order or direction that may be necessary for the preservation of the subject matter of the litigation may therefore be passed or given under the second part of Clause (d).

Preservation of course means keeping the subject matter of the litigation safe from harm to the rights of either and not only one of the parties of the litigation, for at the time that the order or direction of court is prayed for it is not possible to foresee which party would eventually succeed.

One way of doing it can be to allow a party which has been in enjoyment of the right in question under a semblance of title, even though disputed title, to continue to exercise that right pending final determination of the rights of the parties but at the same time to take such security from that party as would compensate the opposite party in the event of the latter eventually succeeding."

With the greatest respect to our learned brothers I am unable to agree with

them. The result of the injunction order that our brothers passed was that though Girja Prasad Sunder Lal had lost the case and their writ petition had been dismissed, they became the winning party and enjoyed rights under the interim order granted under Order XLV, Rule 13 C. P. C. which this Court had held while dismissing the writ petition that they were not entitled to, and the D. F. O. who was the winning party was relegated to the position of the losing party.

It appears to me that such an order would be completely outside the ambit of Order XLV, Rule 13 C. P. C. Powers under Clause (d) extend only to issue such directions which may preserve the subject matter of dispute. In the name of preservation of property possession of the subject matter of dispute cannot be handed over to the party with regard to whom the Court has finally held that he has no right to receive it.

14. The next case on which reliance was placed by the learned counsel for the petitioner is that of Ramanathan Chettiar Vs. M.A.R.R.M. Viswanathan Chettiar, In that case a final decree had been Passed by the subordinate court during the pendency of an appeal to the Privy Council from a preliminary decree in a mortgage suit and the High Court allowed an application of the appellant under Order XLV, Rule 13 (2) (d) and stayed execution of the final decree. The same Court in the case of Rajahmundry Electric Supply Corporation Ltd. Vs. The State of Madras, considered this decision and Rajamannar, C. J., while dealing with it observed as follows :

"The decision may be supported on the ground that in effect the Court was staying the execution of the decree appealed from, because an appeal against a preliminary decree is in a sense an appeal against the final decree in so far as the final decree is dependent on the preliminary decree. Moreover the learned Judges in that case do not appear to have considered the scope of Clause (d) namely, whether it enables the Court to place the Party other than the party seeking the assistance of the Court under any conditions or to give any directions to such a party preventing him from enjoying the fruits or the order against which the appeal is pending."

Thus the Madras High Court itself in a subsequent decision doubted its correctness. In the first place the Ramanathan Chettiar Vs. M.A.R.R.M. Viswanathan Chettiar, is distinguishable and not applicable to the facts of our case. In the second place to my mind the language of Sub-rule (2) of Order XLV, Rule 13 does not warrant the conclusions recorded by the learned Judges in that case. Under that rule a High Court cannot stay proceedings pending in a subordinate court and can Issue directions only in respect of proceedings which have been terminated in the High Court and in respect of which appeal is proposed to the Supreme Court.

15. The decision of the Calcutta High Court in the case of Lalitessur Singh v. Bhabessur Singh 13 Cal WN 690 (FB) and that of this Court in the case of Ram Narain Vs. Harnam Das and Others, which was approved of and followed by

another Division Bench of our Court in the case of Lala Atma Ram Vs. Beni Prasad and Others are in direct conflict with the view taken by the Madras High Court in Ramanathan Chettiar Vs. M.A.R.R.M. Viswanathan Chettiar, With great respect I am unable to agree with the decision of the Madras High Court in Ramanathan Chettiar Vs. M.A.R.R.M. Viswanathan Chettiar, .

16. Mr. Kakkar next placed reliance upon the case of Sarat Kumar Roy Vs. Official Assignee of Calcutta and Others, . In that case the High Court of Calcutta set aside an ex parte preliminary decree in a mortgage suit and directed that the suit be reheard. An application for leave to appeal to the Privy Council was filed against the decision of the Calcutta High Court and a petition was also made under Order XLV, Rule 13 C. P. C. praying that the re-hearing of the suit be stayed. The Calcutta High Court in the case mentioned above stayed the re-hearing of the suit purporting to act under Order XLV, Rule 13 and Section 151 C. P. C.

The facts of this case are very different from the facts before us. The stay of the re-hearing of proceedings would not have the effect of superseding the decree of the High Court and temporarily substituting it by another order inconsistent with that decree. Apart from it it may be stated that the learned Judges who decided this case did not consider the Full Bench decision of their own Court in 13 CWN 690 (Supra), where a completely different view was taken. I am unable to agree. with this decision also for the same reasons for which I have disagreed with the decision reported in Ramanathan Chettiar Vs. M.A.R.R.M. Viswanathan Chettiar,

17. Three other cases of the Calcutta High Court were brought to our notice by Mr. S.N. Kakkar. They are (1) Nand Kishore Singh v. Ram Gulam Sahu ILR Cal 955, (2) Sailendra Nath Das and Another Vs. Saroj Kumar Das and Others, and (3) Ramendra Narayan Roy and Another Vs. Smt. Bibhabati Debi and Others, .

18. In the first Case the execution of a decree in respect of which an appeal was proposed to be filed in the Privy Council, was stayed even before leave had been granted. The Bench who stayed it consisted of Mookherjee and! Holmwood, JJ. Holmwood, J. did not agree with Mookerjee, J. because of Clause 36 of the Letters Patent the opinion of Mookerjee, J., became the rule of the Court

19. In the second case Sailendra Nath Das and Another Vs. Saroj Kumar Das and Others, the Calcutta High Court purporting to act under Order XLV, Rule 13 and Section 151 C. P. C stayed further proceedings in the suit pending decision of the application for leave to appeal to the Privy Council.

20. In the last case Ramendra Narayan Roy and Another Vs. Smt. Bibhabati Debi and Others, large sums of money were held in deposit in the High Court. An application was made for leave to appeal to the Privy Council. Before that application could be decided it was prayed that the sums of money held in deposit be not paid to the decree-holder. The Calcutta High Court directed that the payment be not made till a particular date.

21. None of these three cases touch the point that requires determination by us. The effect of the orders passed was not in any way to go behind the decrees passed in these Cases.

22. The learned counsel then placed reliance upon the case of Shankeramma v. Ramchandra. Reddy AIR 1953 Hyd. 73. In that case Rani Shankeramma, who was the daughter of the last male holder of a large estate, obtained a grant of succession by the revenue authorities to the estate. Ramchandra Reddy, who had been adopted by the widow of the last male holder, succeeded in getting the grant of succession in favour of Rani Shankeramma reversed whereupon Rani Shankeramma filed a writ petition in the Hyderabad High Court praying for the issue of writs of certiorari, prohibition and mandamus with a view riot only to set aside the judgment against her, but also to have the estate released as it had been under the supervision of the Court of Wards ever since the death of her father.

That writ petition was allowed by a Division Bench of the Hyderabad High Court whereupon Ramchandra Reddy made an application for leave to appeal to the Supreme Court and also prayed for the stay of the order passed by the High Court on the writ petition of Rani Shankeramma. The Hyderabad High Court stayed that order. This case again is a clearly distinguishable one and does not touch the point that is in controversy before us.

23. The last case on which reliance was placed on behalf of the petitioners is that of B, an "B", an Advocate of Benares Vs. Judges of the High Court at Allahabad, . In that case a legal practitioner had been suspended for a period of three months. He made an application for leave to appeal to the Privy Council and this Court suspended the operation of the order passed by it suspending the legal practitioner.

24. It would be noticed that the facts of none of the cases relied upon by the learned counsel for the petitioner except Girja Prasad Sunder Lal Vs. Divisional Forest Officer, Dudhi and Others, are similar to the facts of the case before us. In each one of those cases there was an executable decree or order the execution of which was stayed or there was a suit pending which the High Court thought fit to stay. The consequence of none of the Orders passed in those cases was to supersede the decree already passed and to replace it by another order diametrically opposed to the decree for the period of the pendency of the appeal in the Privy Council or the Supreme Court-The view that I am taking is not inconsistent with the decisions of this Court in Ram Narain Vs. Harnam Das and Others, and in Lala Atma Ram Vs. Beni Prasad and Others and that of the Calcutta High Court in 13 Cal WN 690 (Supra), already adverted to in an earlier part of this judgment. In circumstances similar to ours the Assam High Court in Jitendra Narayan Deb and Others Vs. State of Assam, the Rajasthan High Court in Sajjan Singh Vs. State of Rajasthan, and the Madras High Court in Rajahmundry Electric Supply Corporation Ltd. Vs. The State of Madras, rejected the applications made by the defeated parties for orders similar to one which is

sought from us.

I am in respectful agreement with the views of the learned Judges mentioned above. Our own Court in the case of State of Uttar Pradesh and Others Vs. Mukhtar Singh and Others, had dealt with a similar matter. In that case what had happened was that a writ petition had been filed for issue of a writ of certiorari for quashing certain orders passed by the Consolidation of Holdings authorities on the ground that several provisions of Consolidation of Holdings Act were unconstitutional.

A Bench of this Court held that only Section 14 of the Act was ultra vires the U. P. Legislature and quashed certain orders. The State of U. P., which was the respondent in that case, filed an application for certificate for leave to appeal to the Supreme Court under Article 133(1)(c) of the Constitution and also made an application praying that the operation of the order passed by this Court in the writ petition be stayed. Desai. J. (as he then was) held that the application could not be entertained under Order XLV, Rule 13 C. P. C. and also that there were no merits in the application.

The other learned Judge (Beg, J.) refrained from expressing any opinion on the legal question with regard to the applicability of Order XLV, Rule 13 C. P. C., but agreed that on merits the application for interim orders should be dismissed. I find myself in respectful agreement with the view of Desai, J. (as he then was) that an application of that nature could not be entertained under the provisions of Order XLV, Rule 13 C. P. C.

25. In this case the Court has dismissed the writ application of the petitioner with costs with the result that the petitioner's prayer for the issue of a writ of mandamus commanding the respondents not to interfere with his right to ply his stage carriage on the route as also his prayer for a writ of certiorari quashing the impugned notifications were rejected. There is, thus, no order which is capable of being executed, nor is there anything that can be stayed. There is also nothing in respect of which the Court can issue any directions.

26. Lastly directions under Clause (d) can be Issued respecting the subject matter of appeal. The question that immediately arises, therefore, is what is the subject matter of appeal in the present case, if it were a claim with regard to a house or a piece of land or sums of money, the subject matter of appeal would have been the house or the piece of land or the sums of money. In the present case the subject matter of appeal can only be the right which the petitioner was claiming as against the respondents and in respect of which he prayed for a judgment of this Court. Some times the words "subject matter" has been treated to be as equivalent to a cause of action (See Shadi Ram v. Amin Chand AIR 1930 Lah 937).

In the present case the cause of action is the right claimed, or the wrong alleged to have been suffered, by the petitioner On the one hand and the alleged duty of the respondents on the other. It is obvious that no directions can be issued in

respect of such a subject matter under Clause (d) of Order XLV, Rule 13 C.P.C. as the matter by its nature is incapable of being amenable to any directions. For these reasons I am of the opinion that Order XLV, Rule 13, C. P. C. cannot apply to the facts of the case, before xis.

27. The other question which requires determination is whether the Order prayed for by the petitioner can be granted under the provisions of Section 151 C.P.C. That section merely preserves the inherent powers of the Court which it may possess and does not grant any new powers. There is good authority for the proposition that it does not apply where there is an express provision in the Code dealing with the particular matter. Order XLV, Rule 13 has been enacted to give relief after a certificate has been granted. The powers that the Court has got in such matters is exhaustively dealt with in that provision and if there is anything which has been withheld and is not provided for in that provision, Section 151 cannot be used to provide for it, (see *Mukand Lal Vs. Gaya Prasad and Others*

28. It has been strenuously contended that it is of utmost importance that the subject matter Of appeal should be preserved during the litigation so that the party who ultimately succeeds in the Supreme Court, may not stand to lose only because this Court has not passed orders preserving the subject matter of appeal. Reliance has been placed upon a decision of the House of Lords in *Polini v. Gray*, (1879) 12 Ch D 438 and the following passages from that judgment has been read out to us:--

".....An action is brought to determine the rights of claimants to a fund. The plaintiffs fail in the Court of first instance and in the Court of second instance, but are about, "bona fide", to prosecute an appeal to the Court of ultimate resort. The plaintiffs allege that that appeal will be nugatory if the fund is paid out to the defendants, and that if the plaintiffs should ultimately succeed in the House of Lords, that success will be useless to them unless an interim order is made for preserving the fund. I say they So contend, and, assuming the contention to be correct in fact, the question is whether this Court has jurisdiction to prevent such a consequence. It appears to me on principle that the Court ought to possess that jurisdiction, because the principle which underlies all orders for the preserving of property pending litigation is this, that the successful party in the litigation that is the ultimately successful party, is to reap the fruits of that litigation, and not obtain merely a barren success. . . ."

".....The only question we have to consider is whether or not the Court has jurisdiction in a proper case to stay all dealings with a fund pending an appeal to the. House of Lords although the Court has decided against the title of the plaintiff and dismissed the action. I see no difference in principle between staying the distribution of a Fund to which the Court has held the plaintiff not to be entitled, and staying the execution of an order by which the court has decided that a plaintiff is entitled to a fundOn what principle does it do so? It docs so on (Ms ground that when there is an appeal about to be prosecuted the litigation is to be considered as not at an end, and that being so, if there is a reasonable

ground of appeal, and if not making the order to stay the execution of the decree of the distribution of the fund would make the appeal nugatory, that is to say, would deprive the appellant, if successful, of the results of the appeal, then it is the duty of the Court to interfere and suspend the right of the party who so far as the litigation has gone, has established his rights. That applies, in my opinion, as much to "the case where the action has been dismissed."

29. It is conceivable that the Court may have inherent powers to pass orders preserving the subject matter of dispute or to suspend the right of the party who, so far as the litigation has gone, has established his right, during the pendency of the appeal to the higher Court, if there are no statutory provisions dealing with the question of the suspension of the order or the preservation of the subject matter of the appeal during that period.

There are, however, two serious obstacles in the way of the petitioner. In the first place I have already held that there is a statutory provision in the shape of Order XLV Rule 13 C.P.C. which exhaustively deals with the powers of the court relating to the preservation of the subject matter of the appeal and the suspension of orders appealed against and as such there is no scope for any inherent powers. Secondly the petitioner has not asked for the suspension of the order passed in his writ petition.

Apart from it, as the final order of this Court stands, what is there to preserve and what benefit can the petitioner get if the order passed in his writ application is suspended? The only effect of suspending that order would be that the decree-for costs may not be executed. In no case the effect of suspending the order passed by this Court dismissing the petitioner's writ application with costs can be of granting him the injunction he has prayed for.

Even the case of (1879) 12 Ch D 438 does not contemplate an order similar to the one prayed for in this case by the petitioner but only speaks of the order under appeal being suspended. This case does not to my mind support the contention of the learned counsel for the petitioner that an injunction similar to the one prayed for by him can be granted by a Court exercising its inherent powers. It is clear that inherent powers cannot be invoked to nullify a decree and replace it by another thoroughly inconsistent with; and diametrically opposed to it though only for the period of appeal in the Supreme Court.

Besides, varieties of inherent powers of the Court are well recognised and new categories cannot be invented. The C.P.C. makes ample provision for stay of execution of decrees in appropriate cases and it is not open to a court in the exercise of its supposed inherent powers to stay execution in cases other than those provided for merely on the ground that appeals are pending from them. Lastly, Section 151 can only apply to cases where interference is required either in the interests of justice or to avoid an abuse of the process of the Court.

It will be impossible for this Court to say that it would be against the interests of justice or would amount to an abuse of the process of the Court if it allows the

order passed by itself in the writ petition to operate. It is obvious that this Court would not have passed the final order in the writ petition that it did pass if it had considered it either to be unjust or to have amounted to an abuse of the process of the Court.

30. For the reasons mentioned above I am of the opinion that so far as the present case is concerned the question referred to us should be answered in the negative and it should be held that the Court has no jurisdiction to grant interim relief to the petitioner, which he has prayed for either under Order XLV Rule 13 or Section 151, C.P.C. I am also of the opinion that the petitioner should pay the costs of the respondents in this case.

B. Dayal, J. (Dissenting)

31. This Full Bench has been constituted to answer a question which has been referred to it in the following form:

"When a writ petition under Article 226 of the Constitution has been decided and the necessary certificate for filing an appeal to the Supreme Court as required under the Constitution has been granted, has this Court jurisdiction to grant interim relief to the party seeking to appeal to the Supreme Court under Order XLV, Rule 13 C.P.C. or u/s 151 of that Code or under any other provision of law?"

The last few words in the question "or under any other provision of law" appear to be redundant as only three provisions were referred to before the Bench and there was no argument that under any fourth provision also the order could be passed. Out of those three points, the Bench, held that the powers of the Court under Order XLV, Rule 13 C.P.C. and u/s 151 of the C.P.C. are such as require fresh consideration by a larger Bench.

But with regard to the third argument relating to the powers under Article 226 of the Constitution, the Bench was of the view that the matter was concluded by the Supreme Court in the case of *The State of Orissa Vs. Madan Gopal Rungta*, and therefore, no relief could be granted under that Article. In this view the Bench referred the above question relating to the powers of the Court under the first two provisions only. The general words added at the end of the question appear to have no special significance. We, would, therefore, proceed to answer the question on those two points.

32. The facts of the case leading to the controversy may be stated very shortly. The applicant held a permit to ply his stage carriage on a particular route which had been renewed for three years unconditionally according to the applicant. In connection with the nationalisation of a part of the route this permit was cancelled prematurely by the State Government. This cancellation was challenged in a petition under Article 226 of the Constitution in this Court and a writ of mandamus was prayed for requiring the respondents not to interfere with his right to ply the stage carriage on the route and also praying for a writ of certiorari quashing the resolution of the Transport Authorities relating to his

permit.

This petition was ultimately dismissed by this Court on the 6th of March, 1961. The applicant then applied for leave to appeal to the Supreme Court under Article 133(i)(c) of the Constitution. That certificate has been granted to the applicant and it has been held by this Court that the case is fit one for appeal to the Supreme Court. But the appeal has not yet been lodged due to procedural matters, which are likely to take some time. Along with this application for certificate, the applicant also applied for suitable interim directions to the respondents asking them not to interfere in any manner whatsoever with the applicant's right to ply his stage carriage on the route concerned.

33. When this application for interim orders was taken up by the Division Bench for consideration, a preliminary objection had been raised by the respondents that the Court did not possess the power to grant the said prayer. The applicant thereupon pointed out that the Court could under Order XLV, Rule 13 of the C. P. C. pass suitable orders for preservation of the subject matter of the appeal, and in the alternative he contended that if the provisions of Order XLV Rule 13 are not applicable to a proceeding like this the court has inherent powers u/s 151 of the C.P.C. to grant the same. As stated above, the third power pointed out by the applicant under Article 226 of the Constitution was rejected by the Division Bench and is no more relevant for answering the question.

34. In "these circumstances, this Full Bench-has to decide whether the Court has power to grant the interim relief prayed for by the applicant or not. The further question whether in the circumstances of this particular case, the power should be exercised or not, has not been referred to and the answer of this Full Bench will therefore be confined to the jurisdiction of the Court to grant the said relief.

35. Under Ch. XXIII, Rule 26 of the Rules of Court, the provisions of Order XLV C.P.C. have been made applicable to such applications for leave to appeal to the Supreme Court as are not expressly governed by the C.P.C. and for that purpose Order XLV, Rule 13 of the C.P.C. may be read with the necessary modifications and alterations, in order to make it applicable to a proceeding arising out of a writ petition. But of course, such modifications cannot alter the substance of the rule. The rule runs as follows:

"Rule 13(1) Notwithstanding the grant of a certificate for the admission of any appeal, the decree appealed from shall be unconditionally executed, unless the Court otherwise directs.

(2) The Court may if it thinks fit on special cause shown by any party interested in the suit or" otherwise appearing to the Court.

(a) impound any moveable property in dispute" or any part thereof.

(b)

(c)

(d) place any party seeking assistance of the Court under such conditions or give such other directions respecting the subject matter of the appeal as it thinks fit by appointment of a receiver, or otherwise."

The contention of the counsel for the applicant is that the provisions of Rule 13 (2) (a) are wide enough to give powers to this Court to issue any directions respecting the subject matter of the appeal if the Court considers that it is necessary to preserve the subject matter of the appeal pending the appeal to the Supreme Court.

36. Learned counsel for the State contended that Rule 13 read as a whole applies only to a case where an executable decree has been passed and Sub-rule (1) states that in spite of an appeal to the Supreme Court the decree shall be unconditionally executed. Sub-rule (2) merely enumerates the circumstances under which execution can be stayed. According to him, Sub-rule (2) cannot be applied to a case where there is no executable decree passed by the court.

I am unable to agree with this contention of the learned counsel. The heading of this rule is "powers of the Court pending appeal". Although the heading cannot govern the rule itself but it does indicate in a nutshell the purpose of the rule. The heading does not say that these are the powers relating to execution during the pendency of the appeal. Sub-rule (1) of this rule expressly states as a general rule that the decree shall be executed unless the court otherwise directs.

Therefore, it authorises the Court to restrict the execution or to "completely stay execution as It considers proper. After giving that wide power to stay, if the intention was to restrict it only to be exercised in accordance with the provisions subsequently following in sub"-R. (2), the language should have been more clear. Moreover, the language of Sub-rule (2) does not indicate that these powers are restrictive of the powers given in Sub-rule (1).

The main body of Sub-rule (2) authorises the Court On special cause being shown by any party interested in the suit, not necessarily the judgment debtor against whom execution is taking place, or even suo motu, to exercise any of the powers given in that sub-rule. It is difficult to restrict this wide language only to cases where an executable decree has been passed and some questions arise relating to that execution, Clause (a) of Sub-rule (2) authorises the impounding of any moveable property "in dispute" or any part thereof.

It does not relate only to Immovable property against which execution is sought. Thus where the immovable property is the subject matter of dispute, and is likely to disappear if no orders are passed, it is open to a Court under this power to suitably preserve that property during the pendency of the appeal to the Supreme Court. It will be restricting this power too much to say that the Court can only exercise it in a case where a decree is being executed against the moveable property and in ail other cases the Court is powerless to preserve the subject matter of litigation and must permit it to get destroyed and make the Supreme Court appeal thereby futile.

37. Clause (b) no doubt relates to execution but the purpose of the clause is to authorise the Court to take security from the decree holder himself before permitting him to execute so that, the ultimate decree passed by the Supreme Court may not become infructuous. It is not therefore, a power to alter the normal course of execution but to take security before refusing an order of stay under Sub-rule (1). This clause also therefore cannot be read as an exception or a condition under which the general right under Sub-rule (1) can be exercised.

38. Clause (c) of Sub-rule (2) is just the counterpart of Clause (b) and authorises the Court to take security from the judgment debtor before staying the proceedings. It does not say that the court cannot stay proceedings unless the judgment debtor has given security and this clause also gives an additional power of demanding security from the judgment debtor and is no restriction on the general power given under Sub-rule (1).

39. Lastly Clause (d) of this sub-rule authorises the Court, in the first place to place any party seeking assistance of the Court under such conditions as it thinks proper. It has been argued by the respondent that the term "party seeking assistance of the Court" must necessarily be the party which has obtained a decree in its own favour for it alone can seek assistance of the Court for executing that decree and realising the fruits of it,

BUT it may also be noted that a Party which has lost a case and comes to the Court for an interim relief also seeks assistance of the Court to preserve the subject matter of the litigation and if it so seeks the assistance of the Court, then the clause authorises the Court to put such party to terms and grant the assistance after placing it under such conditions as the Court thinks proper. This may be done by the Court either suo motu or on the application of the Opposite party which is opposing the interim relief.

This sub-rule does not say that the person seeking assistance must be placed under conditions on the request of that person himself. In the main body of this rule it is clearly stated that these powers can be exercised at the instance of any party to the litigation or otherwise by the Court itself. Thus there is nothing in the terms of this part of this Clause (d) to indicate that the party seeking assistance of the court must be the decree holder who has obtained a decree from the court and who is seeking assistance by way of execution. There may be cases where a decree has been granted by the trial Court and the appeal by the defendant has been dismissed, and in such a case the appellant may seek assistance of the Court for stay of execution.

In that case he will not be a decree-holder and the Court may put him to such terms as it thinks proper before granting the prayer which prayer in this case will be granted under Sub-rule (1) and the conditions will be imposed upon him under this Clause (d) of Sub-rule (2). I am, therefore, unable to accept that the term "party seeking assistance of the Court" must necessarily be the decree holder and in case where a person has lost in appeal can never be a party

seeking assistance of the Court.

40. In any case, this part of the clause is not invoked by the applicant. According to the appellant the second part of this Clause (d) is applicable to his case. He relies upon the words "or give such other directions respecting the subject matter of the appeal as it thinks fit." This second power given under this clause of giving directions respecting the subject matter of the appeal is not related to the party seeking assistance of the Court. This is a general power.

It can be exercised at the instance of any party or by the Court itself and the further words illustrating this power are "by appointment of a receiver or otherwise." These words also indicate that the intention is to authorise the Court to have wide powers to enable it to adjust the equities between the parties and to see that the appeal to the Supreme Court does not become futile and the subject matter of the litigation does not disappear in the meanwhile. It has to be preserved for the benefit of the party ultimately succeeding.

41. I, therefore, see nothing in Sub-rule (2) of Rule 13 of Order XLV C.P.C. to restrict it to cases where an executable decree has been passed and to my mind it is wide enough to include all cases where there is a property involved in the litigation which can be called the subject matter of the appeal and any party to the appeal may ask the Court to give such directions respecting the subject matter of the appeal as it thinks fit.

42. In this particular case, the contention on behalf of the applicant is that his right of plying his buses is the property which is the real subject matter of this litigation. The whole litigation is for the purpose of that right and the questions relating to the jurisdiction of the Government to pass the impugned orders is merely ancillary to the real question whether the applicant is entitled to this right of carrying on his business.

43. Having given my own opinion on this question, I will consider in brief the most important cases which have been relied upon by the State in order to show that Order XLV, rule 13 of the C.P.C. is wholly inapplicable. The first case relied is 13 CWN 690 (FB). In this case a preliminary partition decree had been passed by the trial court against which an appeal to the High Court had been dismissed and a further appeal to the Privy Council was sought and it was prayed that in the meanwhile preparation of the final decree be stayed.

It was held that the Court did not possess such a power under this rule. It was expressly said by the learned Judges that the prayer did not relate either to put in any party under conditions or to the subject matter of the suit. The prayer merely was for staying of further proceedings which was not authorised by any of the clauses of this rule. That case is therefore, entirely distinguishable and no authority for a case where preservation of the subject matter of litigation is prayed for.

44. This Calcutta case was followed by a Division Bench of this Court in Lala

Atma Ram Vs. Beni Prasad and Others The facts of this case were that a suit had been filed by the Court of Wards on behalf Of a Hindu widow which was withdrawn and the reversioner made an application that he be substituted as plaintiff and the suit be continued. This application was dismissed by the trial court. But On revision, the High Court granted the same and directed the suit to proceed with the new plaintiff. Leave to appeal to the Privy Council was granted and an application was made to stay proceedings in the suit. The observation of the learned Judges who constituted this Division Bench regarding Order XLV, Rule 13 Clause (a) of the C.P.C. was as follows:

"That sub-rule obviously refers to cases where a party is to be put to certain terms or where other order has to be made regarding the custody or disposal of the subject matter of the appeal."

They then referred to an earlier Division Bench case of this Court in Ram Narain Vs. Harnam Das and Others, and the Calcutta case mentioned above and agreed with the observation in those two cases that this rule did not authorise the staying of proceedings in the court below. Thus the Calcutta case as well as these two Division Bench cases of this Court are wholly inapplicable to the facts of the present case. In these cases proceedings were sought to be stayed and it was merely said that there was no power to stay proceedings in the court below. That is not the question in this case.

45. Reliance was then placed on the case of Rajahmundry Electric Supply Corporation Ltd. Vs. The State of Madras, In this case the interim relief which was prayed for was that the Court may grant stay of the operation of a certain Government order directing vesting of the petitioner Corporation pending disposal of the appeal to the Supreme Court. The learned judges of the Madras High Court observed that the applicant was in effect asking for an injunction restraining the State from taking action in pursuance of the order passed by it directing vesting of the Corporation in the State.

It appears that there was no question in that case relating to preservation of any property which. Was the subject matter of that litigation or at least the case was not considered from that point of view. While observing that this rule authorises the Court to give such other directions that is to say, directions placing a party under any condition or respecting the subject matter of the appeal as for instance, by an order directing appointment of a receiver, they proceeded to hold that the provisions did not enable the Court to give any direction to the successful party by way of restricting or preventing it from exercising the rights to which it has become entitled under the final order of the Court.

An earlier Division Bench decision of the same Court in Ramanathan Chettiar Vs. M.A.R.R.M. Viswanathan Chettiar, was distinguished on the ground that In that case the execution of the final decree was sought to be stayed although the appeal to the Supreme Court was against the preliminary decree. This case has not decided whether or not a Court can pass suitable orders to preserve the

property which is the subject matter of the litigation pending appeal to the Supreme Court under this rule. It may also be that probably no question of any damage to the subject matter of litigation could arise in that case. The Government under the order was taking over the Electric Supply Corporation and would have continued to run it. If the Supreme Court appeal was granted, the Corporation would again take it. back.

46. On the other hand, a Division Bench of this Court in *Girja Prasad Sunder Lal Vs. Divisional Forest Officer, Dudhi and Others*, held that the Court can restrain the opposite party from interfering with the petitioner's right during the pendency of his application for a certificate under Article 133. The question whether the power can be exercised during the pendency of the application for a certificate before a certificate has been granted or not, is not before us and it is not necessary to go into that aspect of the case. Here a certificate has already been granted. In this case the learned judges held that the second part of Clause (d) was independent and wide enough to issue any directions relating to the subject matter of the litigation. With this observation I entirely agree with respect.

47. It was also argued that in any case the proceedings in a writ petition cannot be said to involve the question relating to property or status. The object behind a writ of certiorari or prohibition or mandamus or injunction etc. is simply to keep the Courts and Tribunals within the limits of their jurisdiction and to compel them to exercise jurisdiction when it is necessary to do so.

But it cannot be lost sight of that the party which comes to challenge a particular order of the Government may do so for the purpose of protecting its own right in certain properties and in such a case, the whole purpose of the writ is to protect the property and that property would be the subject matter of litigation. The Court gives relief only in a case where the Government or the Tribunal has travelled beyond its jurisdiction in depriving "the party of that property but that does not mean that there is no subject matter of the litigation or that the jurisdiction of the Government or the Tribunal is the only subject matter of a writ proceeding.

48. On a consideration of the whole question I would answer the first part of the question referred to this Full Bench by saying that this Court) has jurisdiction in a proper case to grant an interim relief relating to the party seeking to appeal to the Supreme Court under Order XLV, Rule 13 C. P. C.

49. The other part of the question whether this Court has power under Section 151 of the C. P. C. to grant an interim relief, it may be shortly said that under that section powers can be exercised as may be necessary in the interest of justice or to prevent abuse of the process of the Court. There is no question of abuse of the process of the Court) in a case like this and where express power has been given under Order XLV, Rule 13 of the C. P. C, there is no scope for exercising powers in the interest of justice under this section. I would, therefore,

answer this part of the question in the negative and hold that there is no power u/s 151 of the C. P. C. to grant an interim relief after a certificate of fitness for appeal to the Supreme-Court has been granted.

50. BY THE COURT : In view of the majority opinion of the judges constituting this Bench, we answer the question referred to us in the negative and hold that the Court has no jurisdiction to grant interim relief to the petitioner, which he has prayed for, either under Order XLV Rule 13 or Section 151, C. P. C. The petitioner shall pay the costs of the respondents in this case.