

(1895) 05 CAL CK 0011
In the Calcutta High Court

Pudmanund Singh Bahadur and Others	APPELLANT
Vs	
Chundi Dutt Jha	RESPONDENT

Date of Decision : 14-05-1895

Acts Referred:

Citation : (1895) ILR (Cal) 928

Hon'ble Judges : Prinsep, J; Ghose, J

Bench : Division Bench

Judgement

Prinsep and Ghose, JJ.—This is an application for a certificate to appeal to the Privy Council against an order of a Division Bench of this Court refusing the plaintiff in the suit the appointment of a Receiver in the terms required by him.

2. The application is opposed, and we have had considerable argument addressed to us as to whether this is a proper matter in which a certificate can be granted within the terms of Section 596 of the Code of Civil Procedure, which embodies the provisions of Sections 39 and 40 of the Letters Patent, 1866.

3. In order to entitle a party to a certificate under Clauses (a) and (b), Section 595 of the Code, or Section 39 of the Letters Patent, it is necessary, in a matter of this description, that the order passed shall be a final decree, which, under the definition given in Section 594 of the Code, may be a final judgment and order. It is contended by Mr. Hill, who appears for the petitioner, that the order of the Division Bench of this Court comes within the terms of Clauses (a) and (b), Section 595, or, if it falls short of that, the petitioner is entitled to appeal under the terms of Section 40 of the Letters Patent, which are embodied in Clause (c) of Section 595. We have been referred to several cases in the reports bearing on this subject. The leading case in this Court is that of *The Justices of the Peace for Calcutta v. The Oriental Gas Company* 8 B.L.R. 433, in which, on the interpretation of Section 15 of the Letters Patent, the meaning of the expression "judgment" was determined. It was there declared that "judgment" means a decision which affects the merits of the question between the parties by determining some right or liability. It may be either final or preliminary, or

interlocutory, the difference between them being that a final judgment determines the whole cause or suit, and the preliminary or interlocutory judgment determines only a part of it, leaving other matters to be determined." So also in the case of *Lutf Ali Khan v. Asgur Reza* ILR Cal. 455 it was held that an order, which determines the rights of the parties, is alone appealable u/s 15 of the Letters Patent. And in the case of *Kishen Pershad Panday v. Tiluckdhari Lall* ILR Cal. 182 it was held that it must be an order deciding finally any question at issue in the cause, or the rights of any of the parties.

4. Mr. Hill, however, contends that his client, the plaintiff in the suit, has the right to require the appointment of a Receiver so as to prevent waste; and that the refusal to grant him that right falls within the terms of the law as expressed in those cases. We are of opinion that the right to be determined is a right as expresses! in the case of *Kishen Pershad Panday v. Tiluckdhari Lall*. The order in question must be one deciding finally the question at issue in the cause or the rights of any one of the parties. The appointment of a Receiver was not a matter directly in issue in the cause in respect to the rights of the parties as raised in that suit. It was as it were auxiliary to the decision of the suit in order to prevent any waste on the part of the defendant which might affect the rights which were then under determination. At the highest, the order can only be regarded as interlocutory, as falling within the terms of Section 40 of the Letters Patent.

5. This matter has been recently considered by their Lordships of the Judicial Committee of the Privy Council in the case of *Rahimbhoy Habibhoy v. Turner* ILR 15 Bom. 155 : IL.R. .ALL. 6. It was there found that the proper test in order to determine the meaning of the words "final order or decree" is to be found in the determination of what was really the question before the Court when the decree or order was made. The report also shows that, in the course of the argument, Lord Macnaghten expressed the opinion that "final decree in Section 595 does not mean last decree, but the decree determining rights finally"; by which we understand his Lordship to mean rights raised by the suit itself.

6. In this view, therefore, we are of opinion that the order in question does not fall within the terms of Section 595, Clauses (a) and (b) of the Code of Civil Procedure, or of Section 39 of the Letters Patent; nor is this matter a special case within the terms of Clause (e) of Section 595, or Section 40 of the Letters Patent. If, however, the order be regarded as an interlocutory order within the terms of Section 40 of the Letters Patent, we cannot consider this a proper matter to be specially dealt with in appeal to the Privy Council. If we consider the character of the order issued, and the result which might arise if an appeal were entertained by their Lordships in Council against an order of this description, we are led to conclude that it was not the intention of the Legislature that such an order should be appealable. It has here been determined that the plaintiff is not entitled to a Receiver in the terms desired by him. If he should obtain permission to appeal to the Privy Council, the trial of the suit would nevertheless proceed independently of the course of that appeal. It may so happen that the result of

the trial might be that the plaintiff is found by both Courts in this country to have no merits in his case, and it may also possibly happen that, by reason of the nature of the suit and the judgments passed by the Courts in this country, the plaintiff might be without the right of an appeal to Her Majesty in Council by reason of there being concurrent judgments on questions of fact. So that there would then be an appeal to Her Majesty in Council as regards the question of the appointment of a Receiver when actually the suit itself is finally determined in this country against the plaintiff, and it would not be open to the plaintiff to appeal to the Privy Council on its merits. It seems to us that probably the Legislature had this in view when, in allowing an appeal against a refusal to appoint a Receiver u/s 588 of the Code of Civil Procedure, it simultaneously declared that the order passed in appeal shall be final.

7. For these reasons the application for leave to appeal to Her Majesty in Council in this case is refused with costs.