

(1923) 03 BOM CK 0006

In the Bombay High Court

Case No : O.C.J. Suit Appeal No. 22 of 1921 and Suit No. 82 of 1918

Ratanchand Dayachand

APPELLANT

Vs

Damji Dharsey

RESPONDENT

Date of Decision : 29-03-1923

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 41 Rule 10

Citation : AIR 1923 Bom 399 : (1923) 25 BOMLR 468 : 73 Ind. Cas. 474

Hon'ble Judges : Norman Macleod, J;Crump, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Norman Macleod, Kt., C.J.—This is an application by the respondents for An order directing the appellants to deposit such further security for the costs of the appeal as the Court may think fit, on the ground that the costs of the appeal will run into thousands of rupees beyond the 500 rupees deposited by the appellants under High Court Rule 736 when the appeal was filed.

2. A stay of execution of the decree of the lower Court was obtained on the appellants giving security to the extent of Rs. 35,000.

3. This is an appeal under Clause 15 of the Letters Patent, and it has been contended that Order XLI, Rule 10, does not apply to such appeals, and even if it did, that High Court Rule 736 is inconsistent with it and governs the case. The authority relied upon is Behram Jung (Nawab) v. Haji Sultan Ali Shustry ILR (1912) 37 Bom. 572 : 14 Bom. L.R. 1106.It does not seem to me to matter much whether we hold that Order XLI, Rule 10, is not applicable, as the learned Chief Justice in the case just cited remarked that the appellate Court had the power to demand security if it thought fit to do so in the interests of justice. I also think that High Court Rule 736 is not inconsistent with Order XLI, Rule 10, as it merely prescribes the amount of security which an appellant shall deposit as a condition on which the appeal will be admitted. Although undoubtedly many of

the rules in Order XLI cannot apply to appeals under the Letters Patent, I think it would be going too far to say that none of them are applicable. Certainly in *Kessowji Issur v. Great Indian Peninsula Railway* (1907) L.R. 34 IndAp 115 : 9 Bom. L.R. 671 it appears to have been considered in what circumstances the Appeal Court in a Letters Patent appeal may allow further evidence to be produced u/s 368 of the Code of 1882 corresponding to Order XLI, Rule 27.

4. But the powers to demand security for the costs of an appeal must in any event be exercised according to well-known principles. The mere fact that the appellant may lose and may not pay the costs of the appeal is not a sufficient ground for demanding security. There must be some evidence at least of facts which cast doubts on the honesty and bona fides of the appellant, such as obstruction to the execution of the decree in the lower Court, or the fact that the appellant is not the real litigant, or if in any way it can be shown that the appeal is vexatious. This application, I think, should be dismissed with costs.