

(1922) 04 CAL CK 0015
In the Calcutta High Court

Siva Prosad Singh

APPELLANT

Vs

Rani Prayag Kumari Debi and Others

RESPONDENT

Date of Decision : 27-04-1922

Acts Referred:

Citation : 76 Ind. Cas. 901

Hon'ble Judges : Lancelot Sanderson, C.J.; Thomas Richardson, J

Bench : Division Bench

Judgement

Lancelot Sanderson, C J.

1. This is an application made by the defendant in the suit, who is the Appellant to the Judicial Committee of the Privy Council, to set aside an order made by the Registrar on the 24th April 1922 and for a direction that the papers referred to therein may be excluded from the printed record, or in the alternative that the appellant's petition of objection be also included there in or for such other order as the Court may deem fit and proper.

2. The circumstances leading up to this application are unusual and it is desirable to state the facts. Both the plaintiffs and the defendant in the suit filed appeals to this Court from the decision of the lower Court.

3. On the 9th February 1922 a certain order was made by my learned brothers Mooker-jee and Cuming, JJ., in respect of two Rules obtained by the respective parties.

4. An application was made by the defendant in the suit to the Bench (consisting of my learned brother Richardson, J., and myself) taking Privy Council business, for leave to appeal to His Majesty in Council against the above-mentioned order.

5. On the 10th March 1922 leave was granted. Inasmuch as it was an appeal against an interlocutory order and it was desirable that no time should be lost in bringing the matter before the Judicial committee, we gave certain directions for expediting the appeal, as will appear on reference to our judgment.

6. On the 24th March 1922 the matter was before the Registrar on a question as to whether certain "Suggestions" should be included in the paper-book, which is to be used in the appeal to the Judicial Committee. the Registrar made the following order: "I do not think it necessary to "include the suggestions in the paper-book."

7. The "suggestions" referred to appear to be "Suggestions" which were submitted in writing at the request of the Court by the learned Counsel for the respective parties to my learned brothers Mookerjee and Cuming, JJ., during the argument on the Rules, in respect of which the order of the 9th February 1922 was made.

8. The Registrar having made the above-mentioned order, the respondents in the appeal to the Privy Council made an application to my learned brother Mookerjee and Cuming, JJ., that "they would issue directions to the effect that the suggestions made by the parties before the Hon^{ble} Judges on the 20th January 1922 and which are on the record of the said Rules be treated as part of the record of the aforesaid Rules Nos. 91(P) of 1921 and 1(P) of 1922" or to pass such other orders as the Court might deem fit.

9. On this application the learned Judges, Mookerjee and Cuming, JJ., on the 6th of April 1922 made what is in the nature of a statement. I do not know if it should be called a Judgment or order. It was as follows: "With regard to this application it is sufficient to state what took place when the Rules were heard by us on the 26th January 1922. In the course of the arguments Sir Benode Mitter, Counsel for the defendant, and Mr. Chakravarty, Counsel for the plaintiffs, suggested certain terms on which the Rules might be made absolute. To make sure what those suggestions were, we directed the learned Counsel to put their suggestions into writing and to hand them over to the Bench Clerk. This was done, and the suggestions on each side were set out in writing. Under our direction, those papers were made part of the records of the Rules, and we took the suggestions into consideration when we delivered our Judgment on the 9th February 1922. We may add that direction No. 5 in our judgment was given with reference to the suggestion No. 1 filed on behalf of the defendant in Rule No. 91 P of 1921."

10. The "Suggestions" were endorsed by the Bench Clerk under date 8th April 1922, as having been filed in Court on the 20th January 1922.

11. The matter then came before the Registrar again and he made a further order on the 24th April 1922.

"In view of their Lordships' statement that these papers were to be part of the record of the Rules and were taken into consideration when Judgment was delivered, I order that the suggestions referred to and their Lordships' order dated the 6th April 1922 do form part of the paper-book.

"To save time, let the appellant's application be returned to their Vakil to enable him to present it to the Privy Council Bench if so advised."

12. It is this order which the appellant to England now seeks to have set aside.

13. Amongst other arguments, it was urged by the learned Counsel for the appellant to England that the suggestions submitted by Counsel should not be included in the paper-book as they were really no more than arguments of Counsel as to what orders should be made by the Court- that no reference was made to the "Suggestions" in the judgment of the learned Judges of the 9th February 1922; that, when the application to this Bench was made for leave to appeal to the Judicial Committee, no reference was made to these "Suggestions" except incidentally, and that no argument was based on them.

14. It was further urged on behalf of the appellant that, when the Registrar by his order of the 24th March 1922, refused to include the "Suggestions" the application in respect thereof should have been made to this Bench, which was dealing with the Privy Council business, and that the statement made by the learned Judges on the 5th April was in reality an addition to their judgment of the 9th February, against which leave to appeal to the Judicial Committee had already been given. Particular stress was laid upon the last sentence of the learned Judge's statement viz., "We may add that direction No. 5 in our judgment was given with reference to the suggestion "No 1 filed on behalf of the defendant in Rule No. 91 P of 1921 " which it was urged was really an added reason for the judgment.

15. We do not propose to take upon ourselves the responsibility of excluding these documents.

16. We think it right, however, to draw attention to the fact, that the judgment of the 9th February 1922 does not refer to the "Suggestions" and to state that, during the hearing of the application for leave to appeal to the Judicial Committee, it was not suggested that the judgment had been in any way based on the "Suggestions." Paragraph 7 of the affidavit of J.C Das, affirmed on the 25th April 1922, if read literally, might be taken to mean that the learned Counsel had drawn our attention to the "Suggestion" and to the terms thereof. This was not so; and the learned Counsel for the plaintiffs respondents stated in Court that the word "incidentally" should have been added after the word "referred" in that paragraph.

17. My own recollection is that towards the end of the argument, it was mentioned incidentally that "Suggestions" had been made by the learned Counsel as to the order which it was contended should be made by the learned judges. The terms of the "Suggestions" however were not submitted to this Bench and the impression on my mind was that, although "suggestions" had been made by the learned Counsel on the hearing of the rules nothing had come of such "suggestions," and that the Court had delivered its judgment independently thereof.

18. It was not suggested that the order was in any way a consent order. 17. I express no opinion as to the argument that the above-mentioned statement is an

addition to the judgment. It is not now necessary for me to say anything except that the facts, that the "Suggestions" were made part of the record and that the direction No. 5 in the learned Judge's judgment of the 9th February 1922 was given with reference to the suggestion No. 1 filed on behalf of the defendant in Rule No. 91-F of 1921, were brought to the notice of this Bench for the first time, when the statement of the learned judges, dated the 6th April 1922, was read to us yesterday.

19. We are informed by The officer of the Court that the printing of the paper-book is almost completed and if the order of the Registrar were to stand it would cause considerable delay. Our object all along has been to avoid delay though our efforts do not seem to have met with much success.

20. We, therefore, vary the Register's order and direct that the documents referred to in his order of 24th April 1922 are not to be included in the printed paper-book but that they are to be transmitted in the form of a supplemental paper-book.

21. By agreement between the parties the supplemental paper-book will include besides. the documents, mentioned in the Registrar's order, the appellant's objection to the inclusion of the papers mentioned in the Registrar's order, the appellant's present petition presented to this Bench, and the respondent's answer to that petition, the orders of the Registrar dated 24th March and 24th April 1922, the respondent's application to my learned brother, Mookerjee and Cuming JJ. and Mr. Cooper's report dated 23rd March 1923 and the respondent's petition to the Registrar dated 11th April 1922.

22. The learned Counsel for the appellant submitted that in view of the learned Judge's statement of the 6th April 1922 he desired to submit further grounds of appeal; we give him leave to add such grounds which art to be filed to-morrow.

23. Before leaving this matter, I desire to add that in my judgment, the application of the respondents to England, in respect of the Registrar's order of the 24th March 1922, by which he refused the inclusion of the "Suggestion*" in the paper-book, should have been made to this Bench and not to my learned brothers Mockerjee and Cuming JJ.

24. This is the Bench, which is dealing with Privy Council business : this was the Bench which made the order, giving leave to appeal to the Judicial Committee and if directions became necessary with respect to the preparation of the paper-book, application should have been made to this Bench.

25. It is not necessary for me to dwell at any length, on this point, for during the argue- meat on this application the learned Counsel for the respondents, in answer to a question by me, expressed his personal view that the application should have been made to this Bench.

26. I need hardly point out that if the application had been made to this Bench and if this Bench had thought it necessary to refer to the Bench, which made the

order of the 9th February 1922, for the purpose of ascertaining what documents had been placed on the record, there would have been no difficulty in making such a reference and a considerable amount of time, expense and trouble would have been saved.

27. This judgment will be included in the supplemental paper-book.

28. The utmost despatch is to be given to the preparation of the supplemental paper-book. The costs of the supplemental paper-book are to be paid by the appellant in the first instance. But we direct the Registrar Appellate Side to assess the extra costs which will be incurred with reference to the supplemental paper-book by reason of the respondents to England not applying to this Bench in respect of the Registrar's order of 24th. March 1922. Such extra costs are to be paid by the respondents to England in any event, no matter what may be the result of the appeal.

29. The costs of this application, which we assess at five gold mohurs, will be costs in the appeal.

Richardson, J.

30. Leave was given by this Bench on the 10th March to appeal to England from the order dated the 9th February of another Divisional Bench of this -Court. It appears that during the hearing of the Rules on which that order was made, learned Counsel on either side handed up to the learned Judges suggestions in writing as to the directions or terms which the order should include. My recollection is that if the fact such suggestions were made was referred to at all in the hearing before us of the application for leave to appeal, it was referred to only incidentally. Our attention was not drawn to the suggestions in the sense that we were made aware of their nature or of any special importance attaching to them or of the fact that the papers were extant on the record.

31. It further appears that the Registrar refused an application made to him on behalf of the respondents to England to include these papers on the paper-book of the appeal. Thereupon an application was made by the respondents to the learned Judges upon which they made the order dated the 6th April. In view of that order, the Registrar then directed that the papers containing the suggestions should form part of the record of the appeal and part of the paper-book.

32. The application now before us is in effect an application to discharge the Registrar's second order on the ground that the papers ought not to form part of the paper-book and that the order of the 6th April is an addition to the judgment of the 9th February.

33. I agree and I feel bound to express my agreement with the observation made by the learned Chief Justice that an unusual course was taken by the respondents or their advisers. It was out of the ordinary course to apply to the learned Judges for an order upon an interlocutory matter arising upon an application for leave to appeal to the Privy Council, an application which had

already come before the present Bench as the Divisional Bench dealing with Privy Council matters. The Chief Justice generally presides over that Bench but the principle of course is the same, however the Bench may for the time being be constituted. If the Registrar's original order was mistaken, the application for the rectification of the mistake should in my opinion have been made to the Bench then dealing with Privy Council matters. Upon that if any question of fact had arisen as to what had occurred before the learned Judges who made the order of the 9th February, means could have been found of ascertaining the fact from those Judges. But it is unnecessary to say more as to the inconvenience which might arise if it became a general practice that more than one Bench should deal with the same subject-matter. It is unnecessary because the learned Counsel for the respondents, though speaking, as he says, not for his clients but for himself, has conceded that the course adopted in the present case was irregular and there would, therefore, seem to be no present danger that that course should form a precedent for the future.

34. As to the particular application before us the order of the 6th April must be approached with all the respect due to an order made by two learned Judges of this Court. Nor are we sitting in appeal from that order. From the terms of the order, the learned Judges must, as it seems to me, have intended that it should become a part of the record of the appeal and I am clearly of opinion that, in the circumstances, we should not be justified in withholding from the Privy Council the written suggestions to which I have referred and the order relating to them. Those suggestions and the order must, therefore, be included in a supplementary paper-book to be laid before their Lordships of the Privy Council as a part of the record of the appeal and if that be so the parties are agreed that the supplementary paper-book should also contain the connected document; which my Lord has specified.

35. It also appears to me to be fair that the appellant to England should be at liberty to add to his grounds of appeal the supplementary ground which he will file to-morrow.

36. With these observations, I concur in the order which my Lord has proposed.