
(1903) 05 CAL CK 0036
In the Calcutta High Court

Case No : Application for leave to appeal to His Majesty in Council No. 8 of 1903

Sunder Koer

APPELLANT

Vs

Chandishwar Prosad Singh

RESPONDENT

Date of Decision : 05-05-1903

Acts Referred:

Citation : (1903) 05 CAL CK 0036

Judgement

Maclean, C.J.—As I was a party to the order against which it is desired to appeal to His Majesty in Council, I should have been glad if I could have seen my way to accede to the present application. But, looking to the terms of Clause 39 of the Court's Charter, coupled with Sections 595 and 596 of the Code of Civil Procedure, I do not think it is open to us to grant a certificate. The order against which it is sought to appeal was an order made upon an application u/s 206 of the CPC to amend the decree in the suit dated the 12th of September 1884, so as to bring it into conformity with the judgment; and this Court held that the decree, which was a, consent decree as drawn up accurately represented the views and intentions of the compromising parties. That being the nature of the application and of the order, we have to consider whether it was a final decree--the term "decree" includes "order"--passed on appeal by a High Court or any other Court of final appellate jurisdiction. Under Clause 39 of the Letters Patent of 1865 an appeal to the I Privy Council lies in any matter, "not being of criminal jurisdiction, from any final judgment, decree, or order of the said High Court of Judicature at Fort William in Bengal made on appeal."

2. The question is whether the order in question is an order made or passed on appeal. The point is not free from judicial authority. It was decided by a Full Bench of this Court, so far back as the 11th of September 1866, in the case of Soudamonee Dossee v. Maharaj Dheraj Mahatab Chand Bahadoor (1866) 6 W.R. (Misc. R.) 102, that an order rejecting an application to review a judgment passed on appeal is not an order made on appeal from which an appeal lies to the Privy Council u/s 39 of the Charter of the High Court. There is a substantial analogy in principle between that case and the present. The same view was

practically held in another Full Bench case of *Rajah Enaet Hossein v. Ranee Rowshun Jahan* (1868) 10 W.R. (F.B.) 1, in which it was held that an order made by the High Court on an application to review its judgment in a case of appeal to the Privy Council previously heard is not an order made on appeal within the terms of Clause 39 of the Court's Charter, so as to enable the Court to admit an appeal against such order to His Majesty in Council. In that case Sir Barnes Peacock drew attention to the language used in the Charter--which is practically identical with that in Section 595 of the Code--and to the difference between the words "made or passed on appeal" and "made in the exercise of its appellate jurisdiction." In Section 595 of the Code the language used is "passed on appeal" and not "passed in the exercise of its appellate jurisdiction."

3. We have been referred to a judgment of this Court of the 12th February 1874 in the case of *Girdharee Singh v. Hurday Narain Sahoo* (1874) 21 W.R. 263, in which it was held that "orders made by the High Court u/s 15 of the High Court's Act are subject to an appeal to His Majesty in Council." But, as Sir Richard Couch pointed out, that point was not necessary for the decision of the particular case then under discussion. The Full Bench cases, however, to which I have referred and which, in principle, appear to cover the present case, are binding upon us.

4. But, apart from authority, I should feel a difficulty in saying that the order against which it is now sought to appeal to the Privy Council was an order "passed on appeal by the High Court in its final appellate jurisdiction," and this view gains support from the terms of Section 596, which do not appear to me to apply to such a case as the present.

5. Apart from these considerations, there is a further point, whether the order here was a "final" order within the meaning of Sub-section (a) of Section 575, but it is unnecessary to go into this.

6. Upon these grounds I am of opinion that we have no power to grant a certificate.

7. The application is refused with costs.

Ghidat J.

8. I concur.