

## ORIGINAL CIVIL.

Before Greaves J.

SOLOMON

v.

JYOTSNA GHOSAL.\*

*Examination on Commission—Purdanashin lady—Exemption—Code of Civil Procedure (Act V of 1908), ss. 132, 133—Costs.*

Section 132 of the Code of Civil Procedure covers the case of a woman who, although she may have abandoned the protection of the *purda*, should not be compelled to give evidence in Court, having regard to the class and community to which she belongs.

## APPLICATION.

This was an application by the defendant for the issue of a commission for the examination of himself and his mother. The facts of the case are immaterial for the purpose of this report. The only question was whether, in view of the social position of the defendant's mother, a commission should issue for her examination. It appeared that she was a Hindu lady of good position in society who had definitely abandoned the protection of the *purda*. It was alleged on behalf of the defendant, that although the lady may appear in public, according to the manners of the class and community to which she belonged, there was a great prejudice against her appearing in the witness-box in Court. The lady herself was unwilling to appear in Court to give evidence.

*Mr. B. L. Mitter*, for the petitioner, contended that section 132 of the Code of Civil Procedure was wide enough to cover the present case and relied on *Mohesh*

\* Application in Original Civil Suit No. 831 of 1916.

*Chunder Addy v. Manick Lall Addy* (1) and *Chamatkar Mohiney Dabee v. Mohesh Chunder Bose* (2).

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*Mr. Buckland*, for the opposite party. Section 132 of the Code should be construed as applying exclusively to *pardanashin* ladies. In both the cases cited such ladies were in question. In the present case the defendant's mother is not *pardanashin* and is not entitled to exemption.

GREAVES J. This is an application to examine on commission the defendant in the suit and the mother of the defendant.

So far as the defendant's mother is concerned, it appears on the evidence that she is a lady who appears in public. The evidence that I have before me on her behalf consists of an affidavit of Jogendra Nath Banerjee, a clerk in the employ of the defendant's solicitors. He states "that the lady is an old Hindu lady belonging to a high family and according to the practices prevailing in the community a lady of her station in life does not appear in any Court of law, and the defendant apprehends that unless a commission is issued to examine her it will not be possible to have her evidence". The evidence on behalf of the plaintiff is contained in an affidavit of Sassoon Jacob Cohen, Manager of the estate of Mrs. Azeeza Joseph Solomon Joseph, deceased, which estate is represented by the plaintiff in this suit. He states in paragraph 6, that he is well acquainted with the lady and that she is not a *pardanashin* lady, on the other hand she is a cultured and educated lady of various accomplishments and freely appears in public and goes about in society and talks freely to Europeans and others face to face according to the manners and customs of European ladies. In paragraph 8, he states, that in

(1) (1899) I. L. R. 26 Calc. 650. (2) (1892) I. L. R. 26 Calc. 651 n.

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October 1915 she came in an open carriage to their office at No. 6, Bentinck Street, and in paragraph 9, he states "that in December 1916 she personally called at the house of Mr. Satyendra Nath Sen, an attorney, in Indian Mirror Street and met the deponent and one of the plaintiffs, and talked to them in Mr. Sen's presence". Under these circumstances, I have got to decide whether I shall compel the lady to appear in Court to give her evidence. She does not fall within the provisions of section 133 of the Code of Civil Procedure, which, counsel for the plaintiff admits for the purposes of this application, extends as well to the wives of the persons named therein as to the persons themselves. Accordingly the only section which is applicable is section 132, which provides that women, who according to the customs and manners of the country ought not to be compelled to appear in public, shall be exempt from personal appearance in Court. On behalf of the plaintiff it is said that as the lady has taken advantage of such privileges as attach to the abandonment of the *purda* system, she is not now entitled to claim the privilege of exemption from appearing in the witness-box which is provided by section 132, and it is suggested that section 132 applies exclusively to *purdanashin* or *quasi-purdanashin* ladies, and that it was designed for persons who observe the *purda* system. On behalf of the defendant it is said that although she does appear in public to a considerable extent, yet according to the customs and manners of the class and community to which she belongs, she could not appear to give her evidence in the witness-box in Court. I do not think that the lady who, I am satisfied on the evidence, has abandoned entirely the protection of the *purda*, and who, upon the evidence before me, I cannot see has any intention of resuming it, ought to be compelled,

having regard to the feelings of her class, to appear in the witness-box, and I am not prepared to force her to do so, because, I think, that the Indian point of view, which I think should be respected, would be that although the lady has abandoned the *purda* for the purposes to which I have already referred, it would be something in the nature of an outrage if I were to compel her, having regard to her social position, to appear in the witness-box to give evidence in Court. Under these circumstances, I think it would be unfortunate if I am forced, which I do not think I am by the words of the section, to compel her to come to Court to give her evidence as I think that section 132 is wide enough to cover her case. I feel some considerable doubt whether, having regard to the position she has adopted, I ought not to make her pay the costs of the privilege which she claims. On the whole I think I ought not to do so having regard to the terms of the section and the reasons which I have already stated and which have induced me not to force her to come into the witness-box. The result will be that, so far as she is concerned, I grant the commission asked for and the costs of this commission will be costs in the cause. Mr. H. K. Mitra, Barrister-at-Law, will be commissioner. The commission to be returnable a month after the issue of the writ.

*Commission issued.*

Attorneys for the petitioner: *Kar, Mehta & Co.*

Attorney for the opposite party: *O. C. Gangooly.*

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