

1927

PHANINDRA
KRISHNA
DUTT
v
PRAMATHA
NATH
MALIA.

In these circumstances I am of opinion that this Rule should be discharged with costs; hearing fee—two gold mohurs.

MITTER J. I agree.

S. M.

Rule discharged.

APPELLATE CIVIL.

Before Rankin C.J. and Mitter J.

BIR BIKRAM KISHORE MANIKYA

v.

ALI AHAMAD.*

1927

Aug. 24.

Privy Council—Practice—Minor, representation of—Jurisdiction of High Court, after final admission of Privy Council appeal, to order appellant to put the guardian of minor respondents in funds to conduct appeal.

The High Court is not entitled after the final admission of a Privy Council appeal to make an order directing the appellant in the Privy Council case to put the guardian of the minor respondent in funds to have the case argued on behalf of the minor before the Judicial Committee.

Rules made by the Privy Council for Indian appeals and High Court Rules, Appellate Side, relied on.

APPLICATION in the Privy Council department.

This was an application for payment of costs for the representation of the minors before the Judicial Committee.

The application was made by Babu Jatindra Nath Sanyal, a vakil practising in the High Court, who was appointed guardian of the minor respondents in the

* Application for leave to appeal to His Majesty in Council Nos. 118 to 164 of 1923.

Privy Council appeals, after the final admission of the appeals, at the instance of the plaintiff-appellant to England by the order of the Registrar of the High Court.

It was stated in the application that it was necessary that the minor respondents should be represented by a solicitor and counsel before the Judicial Committee at the time of the hearing of the appeals, that letters written by the guardian to the minors concerned remained unanswered and that the major respondents were not going to be represented before the Judicial Committee. The petitioner accordingly prayed that the appellant to England be ordered to pay the costs of engaging counsel and solicitor for representing the minors before the Judicial Committee and that the amount to be paid by the appellant be fixed and that the appellant be directed to pay the costs of this application.

Babu Ramesh Chandra Sen (with him *Babu Birendra Chandra Das* and *Babu Santimay Majumdar*), for the appellant. This is a unique application. There are no precedents to guide us. The High Court Rules are silent on the point.

Babu Jatindra Nath Sanyal, for the minor respondents

Cur. adv. vult.

RANKIN C. J. This is an application in connection with a batch of 47 appeals now pending before His Majesty in Council. The Privy Council numbers are 118 to 164 of 1923. The appeals arise out of certain settlement proceedings under the Bengal Tenancy Act and they raise a question between the appellant to England and various tenants of his as to the right of the appellant to an enhancement of rent. The High

1927

BIR BIKRAM
KISHORE
MANIKYA
v.
ALI
AHAMAD.

1927

BIR BIKRAM
KISHORE
MANIKYA

v.

ALI
AHAMAD.

RANKIN C. J.

Court decided against the appellant and his application for leave to appeal to His Majesty in Council was filed on the 10th of December, 1923.

It appears that, when the cases were before this Court, the Deputy Registrar was representing the interest of certain minors among the tenants and for the purpose of the application for leave to appeal to the Privy Council there was an order made, on the 8th of February, 1924, that the Deputy Registrar should continue to represent the minors, whom he represented on the High Court appeals, and certain provision was made for his costs. A certificate that the cases were fit to be taken on appeal was granted by this Court on the 8th of June, 1925 and the appeals were finally admitted on the 27th of July, 1925; since that time the record has been printed in India and has lately been forwarded to England.

Now, the practice of this Court, with reference to minors, in cases of Appeals to the Privy Council, is as follows: By rules 39 and 40 of Chapter VI of the High Court Rules on the Appellate Side, it is provided that "all applications by, or on behalf of, an infant shall be made in the name of the infant by the person whose name is on the record as his next friend or guardian; and whenever any application is consented to, or opposed by, an infant, the infant shall in like manner be represented by the person who appears on the record as his next friend or guardian". Rule 40 says: "In case there is no next friend or guardian upon the record, a separate application for appointment of a next friend or guardian must be made."

Now, while it is in accordance with the practice that in default of any more suitable next friend or guardian the Deputy Registrar should be appointed for the purpose of the proceedings in this Court for

obtaining leave to appeal and so forth, upon the final admission of the appeal, the Deputy Registrar ceases to act any further as guardian for the minors. It is not our practice that the Deputy Registrar of the Court should act any further on behalf of the minors in cases which go to the Privy Council. Accordingly, on the 26th of August, 1925, an application for appointment of a guardian having been made, the gentleman, whose application is now before us,—Babu Jatindra Nath Sanyal—was appointed guardian *ad litem* for the minor respondents to England. It appears that, out of these 47 appeals, there are 10 in which this gentleman has been appointed guardian for minor respondents. The numbers of the 10 appeals are as follows: 127, 131, 132, 141, 148, 152, 155, 156, 158 and 163.

We are now concerned with an application made by Mr. Sanyal, as guardian, asking us to order the appellant to put him in funds to have these cases argued on behalf of the minors by a solicitor and junior counsel before the Judicial Committee. Some estimate has been obtained from the agent in England as to the amount of money which would be required for this purpose, and it appears that £ 300 or £ 400 would apparently be necessary, considering that the paper-book is very large and that there would be a good deal of work connected with the case. In these circumstances I find that no such order in connection with Privy Council Appeals has ever been made by this Court hitherto. I am not sure whether any such order has ever been asked for hitherto, and it is necessary very carefully to consider by what right and on what principle such an order could be made by this Court. No doubt in ordinary cases before the Courts in India under the Civil Procedure Code, it would be quite an ordinary practice to direct that the plaintiff in a suit should put the guardian *ad litem* in funds to

1927

BIR BIKRAM
KISHORE
MANIKYA
v.
ALI
AHAMAD.

RANKIN C. J.

1927

BIR BIKRAM
KISHORE
MANIKYA
v.
ALI
AHAMAD.
RANKIN C. J.

a certain extent for the defence of the minor defendants; but we are here exercising a jurisdiction of a very special character. Certain rules have been made under statutory powers by the Judicial Committee of the Privy Council. Under those rules certain duties are cast upon the Courts in India in connection with appeals to His Majesty in Council. The Indian Legislature by the Code of Civil Procedure, particularly by Order XLV, has commissioned the Courts in India to carry out the duties that are imposed by the rules made by the Judicial Committee, but unless we can find that there is express authority given to this Court to make such order as is now asked in connection with an appeal to His Majesty in Council which has been finally admitted and is before His Majesty in Council at the present moment, it is not plain to me that we can have any right to do so. It may or may not be that such an order could be obtained from the Judicial Committee, but our right to make such an order must be granted by an express provision. I have been through the relevant sections of the Civil Procedure Code, Order XLV. I have been through the rules made by the Judicial Committee called the Judicial Committee Rules of 1908, and also through the Order in Council which came into operation in January, 1921 and was made on the 9th day of February, 1920. I have failed to find in any of these rules a provision that would entitle us to take upon ourselves to make such an order as is asked for. The question is no longer one of the proceedings before this Court. Proceedings before this Court have terminated and the whole matter is before the Judicial Committee. In this connection, it is noticeable that under rule 13 of the provisions made by the Privy Council for Indian appeals, where, at any time between the admission of an appeal and the despatch

of the record to England, the record becomes defective by reason of the death or change of status of a party to the appeal, the Court, on an application, may grant a certificate showing who, in the opinion of the Court, is the proper person to be substituted or entered on the record in place of, or in addition to, the party who has died or undergone a change of status; so that in such a case all that this Court can do is to grant a certificate. In that case the name of such person shall be deemed to be so substituted or entered on the record without express order of His Majesty in Council. On the other hand, by Rule 14, where an appeal becomes defective subsequently to the despatch of the record to England, the Court may cause a certificate to be transmitted to the Registrar of the Privy Council showing who, in the opinion of the Court, is the proper person to be substituted; and there the matter stops, so far as this Court is concerned. In my opinion, any order such as is herein asked for would assume a jurisdiction of a character which is materially different from anything that can be justified by the rules which govern Courts in India. It is, however, right to say that in the present case it does not appear to me that the order asked for is an order which it would be either reasonable or in the interest of the minors to make. As I understand the matter, the minors in the ten appeals in question are concerned in resisting the claim of the landlord to a certain enhancement of rent. It appears, in the present case, that, out of all the respondents who are *sui juris* no one is entering appearance or defending the case upon appeal to His Majesty in Council. No doubt that attitude is adopted with a quite intelligent appreciation of the interest of the parties. It is quite clear that if we were to make an order upon the appellant directing him to put the applicant in funds of

1927

 BIR BIKRAM
KISHORE
MANIKYA

v.

 ALI
AHAMAD.

RANKIN C. J.

1927

BIR BIKRAM

KISHORE

MANIKYA

v.

ALI

AHAMAD.

RANKIN C. J.

£ 400 apart from any question of hardship upon the appellant who has given Rs. 6,000 security for costs for all these appeals already, the result upon the interest of the minors might well be disastrous. If by any chance, the appeals were to succeed with the result that the minor respondents became chargeable for such a large sum as their own costs in the appeals, the result would probably be that the whole of their interest in the tenancies would be sold and they would be deprived probably of their means of life. On the other hand, if the appeals should succeed *ex parte*, the result would be presumably that there would be a certain enhancement of rent, and it by no means follows that the Privy Council would direct them to pay any costs which in all the circumstances it would be inequitable or unjust that they should pay. I am not in the least satisfied that even if this Court had the power to make such an order as is asked for, it would be in the interest of the minor respondents that the order should be made. On the contrary, it appears to me that, on the question of interest, the common sense of the matter is that the attitude adopted by those respondents, who are *sui juris*, is an indication of the fact that it is better that the appeals should be heard *ex parte* on points of law and that the order asked for should not be made. This is a matter of first impression and I have thought it necessary to explain in detail the position.

The application, therefore, must be refused. There will be no order as to costs.

MITTER J. I agree.

S. M.

Application refused.