

## CIVIL REVISION.

Before Rankin C. J. and Mukerji J.

HARENDRACHANDRA GHOSH

v.

KAILASHCHANDRA GHOSH.\*

1930

May 5.

*Letters Patent Appeal—Decision of a single Judge in Second Appeal—Refusal of leave to appeal—Letters Patent, 1865, cl. 15 (amended).*

Under clause 15 of the Letters Patent, the sole and necessary condition for an appeal to the court is leave being obtained from the learned judge who tried the Second Appeal.

*Ramanayya v. Kotayya* (1) followed.

APPLICATION by the plaintiffs, Harendrachandra Ghosh and another, under section 115 of the Code of Civil Procedure and section 107 of the Government of India Act.

Second Appeal No. 1158 of 1928, preferred by the plaintiffs in the High Court, was unsuccessful. It was heard by S. K. Ghose J. singly. Thereupon the plaintiffs applied at once for leave to appeal under clause 15 of the Letters Patent. The learned Judge refusing leave, the plaintiffs filed a memorandum of Letters Patent appeal in the office. The office refused to accept it. Hence this application.

*H. D. Bose* (with him *Bhupendrachandra Guha*) for the petitioners. The question is whether the order refusing leave to appeal is an appealable order. I submit this order amounts to a judgment and, therefore, it is not affected by clause 15 of the Letters Patent.

[Cites *Ramanayya v. Kotayya* (1).]

RANKIN C. J. In this case, an application has been made for a Rule to show cause why a certain memorandum of appeal should not be received, the office having refused to accept the same.

\*Application *in re*. Appeal from Appellate Decree, No. 1158 of 1928.

(1) (1929) I. L. R. 52, Mad. 952.

It appears that my learned brother, Mr. Justice S. K. Ghose, heard a Second Appeal and decided it and, on being asked to give a certificate that the case was a fit one for a further appeal under the Letters Patent, he refused the certificate. From this order, it is proposed now to bring an appeal.

In my opinion, such an appeal is quite incompetent and I agree with the decision which has already been given by the Madras High Court in the case of *Ramanayya v. Kotayya* (1). Mr. H. D. Bose for the applicants was desirous of maintaining before us that an order refusing leave to appeal was a judgment under clause 15 of the Letters Patent. I desire to say that I agree with the following observations in the judgment of Mr. Justice Ananta Krishna Ayyar in the case to which I have referred: "Whether the 'order refusing leave to appeal be a 'judgment' or not, 'it is clear that no leave that might be granted by a 'Division Court would satisfy the requirements of the 'clause which provides that an appeal would lie only 'when the judge who heard the Second Appeal grants 'leave to appeal.'" If His Majesty, in ordaining the amendment in the Letters Patent, had intended to provide that a refusal of leave to appeal should be open to challenge, it is reasonably plain that the Letters Patent would have contained a provision for an appeal to the Court either upon leave being obtained from the learned Judge who tried the Second Appeal or from any Division Bench of the High Court. As the Letters Patent now stand, the first is the sole and necessary condition.

The application must, therefore, be rejected.

MUKERJI J. I agree.

*Application rejected.*

S. M.

(1) (1929) I. L. R. 52 Mad. 952, 960.

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*Harendra-  
chandra  
Ghosh*

v.  
*Kailash-  
chandra  
Ghosh.*

*Rankin C. J.*