

[3 Mad. 66.]
APPELLATE CIVIL.

The 21st April, 1880.

PRESENT :

SIR CHARLES A. TURNER, KT., CHIEF JUSTICE, AND MR. JUSTICE
MUTTUSAMI AYYAR.

Seshayyangar and another.....(Sixth and Ninth Respondents in S. A. 663
of 1879) Petitioners

versus

Jainulavadin and another.....(Appellants in S. A. 663 of 1879)
Counter-Petitioners. *

Security for costs—Pauper—Civil Procedure Code, Section 549 applies to pauper appellant.

A suitor *in forma pauperis* may be called on to give security for costs under Section 549 of the Civil Procedure Code, but very special grounds must be shown to support such an application.

Nusseerudeen Biswas v. Ujjal Biswas (17 Suth. W. R., 68) dissented from.

[67] THIS was an application under Section 549[†] of the *Civil Procedure Code* to the High Court by the respondents in Second Appeal 663 of 1879, to take security from the appellants therein for costs in that appeal, on the ground (a) that the appellants were paupers and had neither paid the costs of the first appeal nor the sum due to Government for stamp-duty, and (b) that there was no substantial ground for preferring the appeal.

V. *Bhashyam Ayyangar* for the Petitioners.

A. *Ramachandrayyar* for the Counter-Petitioners.

The arguments sufficiently appear in the following Judgment of the Court (TURNER, C.J., and MUTTUSAMI AYYAR, J.) :—

Judgment.—We are not prepared to follow the ruling cited (17 Suth. W.R., 68) and to hold that Section 549, *Civil Procedure Code*, which empowers the Court, in its discretion, to demand from an appellant security for the costs of the appeal, does not apply to appeals instituted *in forma pauperis*. We are of opinion that the language of the section is general, and that it applies to all appeals; but, seeing that a suitor should not be allowed to appeal *in forma pauperis* unless there is *prima facie* ground for believing that there are substantial grounds of appeal, and that it would ordinarily defeat the intention of the law if a pauper were called on to find security, we hold that very special grounds should be shown to induce the Court to call on him to find security. If it were shown

* C. M. Petition 172 of 1880.

† [Sec. 549 :—The Appellate Court may, at its discretion, either before the respondent is called upon to appear and answer or afterwards on the application of the respondent, demand from the appellant security for the costs of the appeal, or of the original suit, or of both :

Provided that the Court shall demand such security in all cases in which the appellant is residing out of British India, and is not possessed of any sufficient immovable property within British India independent of the property (if any) to which the appeal relates.

If such security be not furnished within such time as the Court orders, the Court shall reject the appeal.]

that the paupers were mere creatures in the hands of persons well able to find security, the order would not be improper. (18 W. R., p. 102.)

In the present case no special reasons are shown. The application is disallowed.

NOTE.—See I. L. R., 3 Bom., 241.

NOTES.

[PAUPER APPEAL—SECURITY FOR COSTS—

(1) *May be demanded of a pauper* :—Security for costs against a pauper appellant must be given under very exceptional circumstances :—(1885) 7 All. 542; (1907) 17 M. L. J. 583.

(2) But application must be made with promptitude before bulk of the costs has been incurred :—(1907) 17 M. L. J. 583.]

[68] APPELLATE CIVIL.

The 26th July, 1880.

PRESENT :

SIR CHARLES A. TURNER, KT., CHIEF JUSTICE, AND
MR. JUSTICE MUTTUSAMI AYYAR.

R. Ry. Mana Vikrama, Zamorin, Maharaja Bahadur of
Calicut.....(Plaintiff) Petitioner

versus

Mallichery Kristnan Nambudari.....(Defendant) Counter-Petitioner.*

Civil Procedure Code, Sections 622 and 525, 526.

When a Court has refused to file an award upon an application under Section 525, Civil Procedure Code, no appeal lies against such decision, which is an order and not a decree; but the High Court can interfere under Section 622.

An award made under Section 525[†] which is partly within and partly exceeds the terms of the submission to arbitration, cannot be enforced by summary procedure under Section 526 as to such portion as does not exceed those terms.

To refer to arbitration questions arising on the construction of the award and questions left undecided by it is a matter beyond the scope of an agreement to submit to a scheme for the future management of a devasam as regards conduct of suits, granting of demises, custody of property, collection of rents, appointment and removal of servants, and defrayment of current expenditure.

THIS was an application made under Section 525 of the *Civil Procedure Code* for the filing of an award.

*C. M. P. 251 of 1880 for revision of the order of F. M. Kindersley, District Judge of Coimbatore, dated 30th January 1880.

†[Sec. 525:—When any matter has been referred to arbitration without the intervention of a Court of Justice, and an award has been made thereon, any person interested in the award may apply to the Court of the lowest grade having jurisdiction over the matter to which the award relates, that the award be filed in Court.

The application shall be in writing and shall be numbered and registered as a suit between the applicant as plaintiff and the other parties as defendants.

Notice to parties to arbitration, The Court shall direct notice to be given to the parties to the arbitration other than the applicant, requiring them to show cause, within a time specified, why the award should not be filed.]