

APPLICATION for leave to sue *in formâ pauperis*. The District Judge dismissed the application, whereupon the applicant filed this civil revision petition, on the ground that the Judge was bound to give leave if the allegations made by the petitioners were such that, if true, they would show a good cause of action.

V. *Krishnaswami Ayyar* for petitioner.

P. S. *Sivaswami Ayyar* for respondent.

JUDGMENT.—I am asked to revise an order of the District Judge dismissing an application for leave to sue *in formâ pauperis*. The argument has been that the Judge was bound to give leave if the allegations made by the petitioners were such that, if true, they would show a good cause of action. Such a construction of section 407, Civil Procedure Code, seems to me to be quite inconsistent with the express words of section 406, Civil Procedure Code, and is unsupported by authority. The authorities are the other way—see *Kamrakh Nath v. Sundar Nath*(1) and *Amirtham v. Alwar Manikkam*(2).

This petition is dismissed with costs.

APPELLATE CIVIL.

Before Mr. Justice Bhashyam Ayyangar.

SESHA AYYAR AND ANOTHER (RESPONDENTS Nos. 2 AND 3),
PETITIONERS,

1903.
July 15.

v.

NAGARATHNA LALA (APPELLANT), COUNTER-PETITIONER.*

Civil Procedure Code—Act XIV of 1882, s. 549—Security for costs—Appeal under Letters Patent in case from mufussil—Power of High Court to order appellant to give security.

A respondent in an appeal preferred under article 15 of the Letters Patent against the decision of a single Judge of the High Court in a case from the mufussil cannot apply for an order on the appellant to give security for the costs

(1) I.L.R., 20 All., 299.

(2) I.L.R., 27 Mad., 37.

* Civil Miscellaneous Petition No. 370 of 1903, praying the High Court to order the appellant in Letters Patent appeal No. 1 of 1903, on the file of the High Court, to furnish security for the costs of the respondents Nos. 2 and 3 therein.

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of an appeal. Section 549 of the Civil Procedure Code applies only to appeals preferred to the High Court from subordinate Courts subject to its appellate jurisdiction and not to appeals preferred to the High Court, under article 15 of the Letters Patent, from the judgment of one of its own Judges. Nor does section 647 apply to appeals under the Letters Patent so as to extend the provisions of section 549 to such appeals.

APPLICATION for security for costs. The application was made by the respondent in an appeal which had been preferred under article 15 of the Letters Patent against the decision of a single Judge of the High Court in a case from the mufussil.

K. Balamukunda Ayyar, for the appellant, raised a preliminary objection that the petition could not be entertained. He contended that the Court has no jurisdiction to order security to be given for the costs of a respondent in a Letters Patent appeal. The Civil Procedure Code does not apply to such appeals, so section 549 cannot apply. (Vide *Sabhapathy Chetti v. Narayanasami Chetti*(1).) Nor had any rules been framed by the High Court for demanding security in such a case. This being a mufussil case the jurisdiction of the late supreme Court, as a Court of equity, could not be invoked.

M. R. Sankara Ayyar, for respondents Nos. 2 and 3.—It appears that no appeal lay to the late Sudder Court from the judgment of one of its Judges. The Letters Patent provide for an appeal in the case of the High Court. Though the jurisdiction of the High Court is invoked under article 15 of the Letters Patent, the procedure to be followed should, in the absence of any express provision to the contrary, be that prescribed by the Civil Procedure Code for appeals. Section 549, is general in its terms. Section 632 makes its provisions applicable to the High Court. The effect of the Letters Patent appeal being only to re-open the second appeal, it is only a continuation of the second appeal and the procedure prescribed for second appeals is applicable. Under section 587, section 549 would apply. Even if not, under section 647, it would apply. The word "appeals" in the section would not cover Letters Patent appeals. At any rate the High Court has an inherent jurisdiction to demand security from an appellant before it. The High Court that hears the second appeal and the Letters Patent appeal is the same. Its powers

are not more limited in the latter case than in the former. It would be an anomaly to hold that the High Court has no power to demand security in the Letters Patent appeal while it has power in the case of a second appeal. Moreover the respondents were not called upon to appear in the second appeal and now they are. There would be hardship in holding that no security for costs can be demanded now. Where no specific rules exist, the Court will act according to justice, equity and good conscience.

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JUDGMENT.—In my opinion the respondent in a Letters Patent appeal preferred against the decision of a single Judge of this Court in a mufussil case cannot apply for security being demanded from the appellant for costs. Section 549 of the Civil Procedure Code applies only to appeals preferred to the High Court from subordinate Courts subject to its appellate jurisdiction (*Sabhapathy Chetti v. Narayanasami Chetti*(1)) and not to appeals preferred to the High Court under article 15 of the Letters Patent from the judgment of one of its own Judges. Assuming that it would be competent to the High Court to pass such a rule, no rule has been made under section 652 of the Civil Procedure Code authorising the making of such an application. It is also conceded that no such rule was in force in the old Sudder Court and that being so, section 9 of the Charter Act cannot be relied upon in support of this application. I am unable to accede to the argument that section 647 of the Civil Procedure Code applies to Letters Patent appeals and that therefore the provisions of section 549 are extended to Letters Patent appeals. The petition is therefore rejected but without costs.

(1) I.L.R., 25 Mad., 555.