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to be an order passed under section 151. The first respondent could have presented a fresh application for execution, but owing to the law of limitation he is precluded from doing so and that would not give jurisdiction to a Court to invoke the aid of section 151. Mr. Patanjali Sastri very strongly urged that his client would lose about Rs. 5,000. However dishonest the conduct of the appellants might have been, they are entitled to the relief which the law gives them. We therefore, with much regret, allow the appeal, but in the circumstances disallow the costs of the appeal.

K.R.

APPELLATE CIVIL.

Before Mr. Justice Phillips and Mr. Justice Madhavan Nayar.

1926, March 2.

BATHINA SUBBARAMI REDDI (PETITIONER), PETITIONER,

v.

GANESAM PATTABHIRAMI REDDI (RESPONDENT), RESPONDENT.*

Guardians and Wards Act (IX of 1890), ss. 41 (3), (4)—Minor attaining majority—Discharge of guardian by Court—Accounts, filed by guardian—Application to Court by quondam minor to enquire into the correctness of accounts filed by guardian—Court, whether competent to inquire in proceedings under the Act—Remedy by suit—Scheme of the Act—Court, not bound to declare guardian discharged from liability to minor—Disputes between minor and guardian to be determined only by suit and not by proceedings under the Act.

Where a minor, to whom a guardian had been appointed under the Guardians and Wards Act, 1890, attained majority

* Civil Revision Petition No. 400 of 1925.

and the guardian was discharged and filed his accounts, the Court should not hold an enquiry under the Act into the correctness of the accounts and determine what amount or property was really accountable by the guardian to the minor.

The whole scheme of the Act seems to provide for matters of this kind, i.e., disputes between the minor and the guardian, by way of a suit by the minor against the guardian and not by way of proceedings under the Act.

Under section 41 (4), the Court is not *bound* to declare the guardian discharged from his liabilities and so is not bound to make an enquiry into the correctness of the accounts filed by him. *Nabu Bepari* v. *Sheikh Mahomed*, (1900) 5 C.W.N., 207; *Jagannath Panja* v. *Maheshchandra Pal*, (1916) 21 C.W.N., 688; and *Abdul Hasim* v. *Maleka Khatun*, 29 C.L.J., 44, followed; *Sitaram* v. *Musamat Govindi*, (1924) I.L.R., 46 All., 458, dissented from.

REVISION PETITION praying the High Court to revise the order of A. S. BALASUBRAHMANYA AYYAR, District Judge of Nellore, in I.A. No. 402 of 1924 in O.P. No. 85 of 1918.

The respondent was appointed guardian of the property of the petitioner during his minority, under the Guardians and Wards Act, 1890. The minor attained majority in 1924. The respondent applied to the District Court for being discharged from guardianship as the minor had come of age. The Court ordered his discharge from guardianship. But the respondent did not file his accounts into Court or deliver them or any property to the minor at any time. The petitioner filed the present application in the District Court under section 41 of the Act, praying that the guardian might be ordered to bring in and pass before the Court an account of the properties of the minor that came into his hands during his guardianship, and to deliver the properties of the minor which were ascertained on enquiry to be in his hands. The respondent filed certain accounts into Court and stated that he was in possession of Rs. 4,137 and odd and not Rs. 16,000 as

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alleged by the petitioner. The petitioner requested the District Judge to hold an enquiry into the correctness of the accounts filed and ascertain the real liability of the respondent in these proceedings. The District Judge declined to make an enquiry and passed an order as follows:—

"The accounts are filed. The petitioner will institute a suit if so advised against the discharged guardian on the items in the accounts to which he wishes to take objection."

Against this order, the petitioner filed this Civil Revision Petition.

B. Somayya for petitioner.

M. Patanjali Sastri for respondent.

JUDGMENT.

PHILLIPS, J.

PHILLIPS, J.—This is a petition under the Guardians and Wards Act. The minor having attained majority, the guardian was discharged and filed his accounts in Court. The minor took objection to these accounts and wished the Court to hold an enquiry and ascertain what amount was really due by the guardian. The District Judge has declined to hold any enquiry and has referred the minor to a suit if so advised. It is now contended for the petitioner, the late minor, that this order is wrong and that under section 41 (4) the Court ought to have held an enquiry and discharged the guardian after ascertaining what was due from him. There is no specific provision in the Act for such taking of accounts and determining the amount due by the guardian, but it is contended that in view of the fact that section 41 (4) says "the Court may declare him to be discharged from his liabilities," etc., this can only be done after an enquiry has been held, but it must be observed that there is no mandate in this section and it is not necessary that the Court should make such a declaration. Undoubtedly, if

it were incumbent on the Court to make such a declaration, the Court would not be able to do so without holding an enquiry. It has been held by the Calcutta High Court in three cases *Nabu Bepari* v. *Sheikh Mahomed*(1), *Jagannath Panja* v. *Maheshchandra Pal*(2) and *Abdul Hasim* v. *Maleka Khatun*(3) that under the Guardians and Wards Act no such enquiry should be held. The Allahabad High Court has taken a contrary view in *Sita Ram* v. *Musammat Govindi*(4) and there is also the opinion of a Judge of this Court in C.R.P. No. 761 of 1922 to the effect that the Court ought to take an account. To deal with this last case first, the learned Judge seems to have come to this conclusion on the ground that he was unable "to concede that the Court is bound to accept without scrutiny any accounts that the guardian chooses to submit." This will certainly be applicable if the Court were bound to make the declaration mentioned in section 41 (4), but if the Court is not so bound, it does not seem necessary that there should be such an enquiry. If the Court is satisfied on a perusal of the accounts and on hearing the parties that the accounts are correct, it may make such a declaration, but it is not bound to do so, nor is it bound to certify that the accounts are correct. The whole scheme of the Act seems to provide for matters of this kind, i.e., disputes between the minor and the guardian, by way of suit. During the minority sections 35 and 36 provide for suits being filed by a next friend of the minor in case of misconduct on the part of the guardian, and there can be no doubt that, when the minor attains majority, he can bring a suit against his guardian. There being no provision at all for any enquiry into accounts by the

(1) (1900) 5 C.W.N., 207.
(2) (1916) 21 C.W.N., 688.
(3) 29 C.L.J., 44.
(4) (1924) I.L.R., 46 All., 458.

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Court, I think the opinion expressed by the Calcutta High Court is the correct one. This view obtains support from section 34 (*c*) and (*d*) where it is provided that the guardian must exhibit his accounts in the Court at such times and in such form as the Court from time to time directs and that if so required by the Court the guardian must pay into Court the balance due from him on those accounts, or so much thereof as the Court directs. These provisions presume that the accounts are correctly submitted and the Court may take action on such accounts, but no provision is made for an enquiry as to whether the accounts are correct or not. Similarly, under section 41 (3) when a guardian has been finally discharged, the Court may require him to deliver any property in his possession or control belonging to the ward or any accounts in his possession or control relating to any past or present property of the ward. This section quite clearly assumes that a guardian will put in the accounts that he has been directed to keep into Court and that these accounts will be accepted subject to the minor's rights, or those of a next friend on his behalf, to question them in proper proceedings. If the Court were to hold an enquiry and come to the conclusion that the guardian owed a much larger amount than that stated in his accounts, there is no provision for enforcing any such order. Further, such an order is not appealable under section 47, and under section 48 an order made under the Act is final and is not liable to be contested by suit or otherwise. If therefore the Court made an order that the guardian was to pay a definite sum into Court, such an order could not be contested by a suit and there would be no remedy left either for the guardian or for his ward. This seems to be contrary to the intention of the Act, which as I have said before appears to leave all these questions for decision by a suit

outside the guardianship proceedings. The interests of the minor are sufficiently protected firstly by the selection of a guardian by the Court, secondly by the control of the Court over such guardian. With all respect, I am unable to agree in the conclusions of the Allahabad High Court, for I do not think the arguments are very convincing. I prefer to follow the opinion of the Calcutta High Court referred to above and hold that the Court should not hold an enquiry and pass orders in such matters.

PHILLIPS, J.

The District Judge's order is therefore correct and this petition is dismissed with costs.

MADHAVAN NAYAR, J.—I entirely agree. The concluion which we have arrived at in this case is also supported by the reasoning in C.M.A. No. 269 of 1925 to which I was a party. In that case it was held that, under section 45 (1), clause (*c*), a guardian is not expected to deliver "property or accounts" which he has not actually got in his possession. In other words, it was held that the property to be delivered is the property which is actually in the possession of the guardian and not what he should have with him according to the opinion of the Court; and so also, the accounts to be delivered are those which have been actually kept by him and not those which according to the Court are the correct accounts. The phrase used in section 41 (4) "when he has delivered the property or account" is the same as used in section 45 (1) (*c*) and may be understood also in the same way.

MADHAVAN NAYAR, J.

K.R.