

APPELLATE CIVIL

Before Sir Owen Beasley, Kt., Chief Justice,
and Mr. Justice Stodart.

1935,
November 12

M. R. ANANTHANARAYANA IYER (PETITIONER),
APPELLANT,

v.

RARICHAN (minor) BY guardian UNNOOLI *alias* MADHAVI
(RESPONDENT), RESPONDENT.*

*Letters Patent (Madras), Cl. 15—Judgment—Pauper appeal—
Delay in filing—Order of single Judge excusing, and
admitting appeal—Order refusing to set aside—Judg-
ment, if—Appeal against—Competency of.*

An order of a single Judge of the High Court excusing the delay in the filing of a pauper appeal and admitting the appeal is not a "judgment" which can be the subject of an appeal under Clause 15 of the Letters Patent. The order is not one which puts an end to a proceeding but on the contrary it enables it to go on. No appeal lies under that clause from an order of the learned Judge refusing to set aside that order.

Tuljaram Row v. Alagappa Chettiar, (1910) I.L.R. 35 Mad. 1 (F.B.), referred to.

Brajagopal Ray Burman v. Amar Chandra Bhattacharjee, (1928) I.L.R. 56 Cal. 135, relied upon.

APPEAL under Clause 15 of the Letters Patent against the order of LAKSHIMANA RAO J. dated 3rd August 1934 and made in Civil Miscellaneous Petition No. 1280 of 1934 presented to the High Court praying for an order to set aside the order excusing the delay in filing Serial Register No. 21178 appeal in *forma pauperis* sought to be preferred to the High Court against Original Suit

* Letters Patent Appeal No. 33 of 1934.

No. 48 of 1932 on the file of the Court of the Subordinate Judge of Calicut dated 30th March 1933 and made in Civil Miscellaneous Petition No. 4002 of 1933 in Appeal Suit No. 389 on the file of the High Court.

ANANTHA-
NARAYANA
v.
RABICHAN.

C. S. Swaminathan for appellant.

S. Venkatachala Sastri for respondent.

JUDGMENT.

BEASLEY C. J.—The respondent was the fifth BEASLEY C.J.
defendant in a suit in which a decree had been granted in favour of the third plaintiff. He put in an application for leave to appeal as a pauper to the High Court. That application was out of time by a few days. The application for excusing the delay and for the admission of the appeal was heard *ex parte* by LAKSHMANA RAO J. who excused the delay and admitted the appeal and gave the necessary directions upon the question of pauperism. The appellant here, who was the successful third plaintiff in the suit, put in an application before LAKSHMANA RAO J. for the setting aside of his previous order excusing the delay. LAKSHMANA RAO J. saw no reason for setting aside his previous order ; and it is with regard to that order that this appeal under Clause 15 of the Letters Patent is before us. A preliminary objection has been taken by the respondent that no appeal lies from such an order under Clause 15 of the Letters Patent ; and reference has been made to the well-known case of *Tuljaram Row v. Alagappa Chettiar*(1) where, on the question as to what is a “ judgment ” which

(1) (1910) I.L.R. 35 Mad. 1 (F.B.).

ANANTHA-
NARAYANA
v.
RARICHAN.

BEASLEY C.J.

under Clause 15 of the Letters Patent is an appealable one, WHITE C. J. laid down the test as “whether its effect is to put an end to the suit or proceeding so far as the Court is concerned . . . even if it does not affect the merits of the suit or proceeding and does not determine any question or right raised”.

If it merely allows the proceedings to go on, then it is not a final “judgment” which can be the subject of an appeal under Clause 15 of the Letters Patent. This decision has been applied in a number of other later cases in the Madras High Court although not dealing with an order precisely similar to this. The effect of the order in the present case is that the appeal which would otherwise not have been admitted was, by the excusing of the delay, allowed to proceed. The order, therefore, was not one which put an end to a proceeding but, on the contrary, it enabled it to go on. A case in the Calcutta High Court which is similar to the present one is *Brajagopal Ray Burman v. Amar Chandra Bhattacharjee*(1), a decision of a Bench of three Judges consisting of RANKIN C. J. and SUHRAWARDY and GRAHAM J.J. There, a second appeal was presented out of time and the appellants obtained a rule calling upon their opponents to show cause why the appeal should not be registered. The two Judges composing the Bench who heard the rule differed in opinion. The rule was made absolute in accordance with the opinion of the senior Judge. From this order an appeal was lodged under Clause 15 of the Letters Patent which is exactly similar to Clause 15 of the Letters Patent of the Madras High Court. It was there held that the

(1) (1928) I.L.R. 56 Cal. 135.

order allowing the second appeal to be presented out of time was not a "judgment" within the meaning of Clause 15 of the Letters Patent although this opinion was come to by RANKIN C.J. with some hesitation. Dealing with the matter, he says on page 144:

ANANTHA-
NARAYANA
v.
RARICHAN,
BEASLEY C.J.

"On the whole and not without some doubt I think that the mere circumstance that an order puts in peril the finality of a decision given in the respondent's favour does not of itself make that order a 'judgment' within the meaning of Clause 15 of the Letters Patent. The same might be said of an order restoring a suit under Order IX, rule 9, and with much greater reason. The same might be said of any order giving leave to appeal or granting a certificate that a case was a fit one to be taken on appeal. Whether any distinction can logically or practically be maintained between an order setting aside an abatement and an order restoring a suit after dismissal for default may well be doubted. But in the case now before us the order complained of does not set anything aside. It operates merely to declare that the appeal may be entertained."

I agree with the view there expressed by RANKIN C. J. and in my opinion, therefore, the preliminary objection raised here must be upheld and the appeal dismissed without costs.

STODART J.—I agree with my Lord the Chief Justice.

A.S.V.
