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 MAHOMED  
 ABID ALI  
 KUMAR  
 KADAR  
 v.  
 LUDDEN  
 SAHIBA.

in its civil jurisdiction, it has been declared that no relationship exists between him and the defendant, and he can ask the Magistrate on the authority of the cases of *Abdur Rohoman v. Sakhina* (1), and *Abdul Ali Ismailji v. Husenbi* (2), to abstain from giving any further effect to his order for maintenance. The decree of the lower Appellate Court will accordingly be set aside, and the plaintiff will receive his costs in this Court and in the lower Courts.

H. T. H.

*Appeal allowed.*

### PRIVY COUNCIL.

P. C.\*  
 1886  
 November 13.

INDER KUMARI (DEFENDANT) v JAIPAL KUMARI (PLAINTIFF.)  
 [On petition from the Court of the Judicial Commissioner of Oudh.]

*Appeal to Privy Council—Security for performance of order to be made by Her Majesty in Council—Civil Procedure Code, 1882, s. 608—Refusal of order staying execution where decree was not yet appealed to the Privy Council, but leave to appeal from interlocutory orders in execution granted—Intimation to Court below.*

A party to a suit in an Appellate Court, who had obtained leave to appeal from its decree to Her Majesty in Council, petitioned for the order of the latter staying execution of interlocutory orders made in execution of such decree, and directing payment by the petitioner to the opposite party of large sums without security taken for their repayment in the event of the decree being reversed. This accompanied a petition for special leave to appeal against those orders. The latter was granted, but it not being competent to the Judicial Committee to make any order as to the stay of execution, an intimation was made by it to the Court below that it appeared to be the reasonable course that the opposite party should not, pending the appeal, be put into possession of the large sums in dispute. That intimation being made, the petitioner might apply to the Court below for the due security of all money paid into the treasury in obedience to the decree. *Sidhee Nazur Ali Khan v. Oojoodhyaram Khan* (3) and *Zeritool Batool v. Hosseine Begum* (4) referred to.

PETITION for special leave to appeal from interlocutory orders (22nd June, 1886) made in execution of a decree (27th March, 1886) of the Judicial Commissioner of Oudh, reversing a decree

\* *Present*: LORD HOBHOUSE, SIR B. FRACOCK and SIR R. COUCH.

(1) I. L. R., 5 Calc., 558.

(3) 10 Moore's I. A., 322.

(2) I. L. R., 7 Bom., 180.

(4) 10 Moore's I. A., 196.

(25th August, 1886) of the District Judge of Faizabad, and also for an order that, pending the hearing of the appeal, execution of the said orders should be stayed.

The proceedings out of which the present petition arose related to the will of the late Maharaja Digbijai Singh, talukdar of Balrampur, who died on the 27th May, 1882, leaving two widows, of whom the present petitioner, Maharani Inder Kumari, was the senior and the Maharani Jaipal Kumari, the plaintiff in the suit, was the junior.

On the 7th November, 1883, the senior widow, under a power which she believed herself to possess under the Maharaja's will, adopted a son to him. On the 3rd December in the same year, the junior widow commenced the present suit against the senior widow and the adopted boy, disputing the validity of the adoption, claiming to share the estate equally with the senior widow for her life, and claiming also mesne profits.

The District Judge of Faizabad held the adoption by the senior widow to be valid, in which opinion he was supported by the Judicial Commissioner on the appeal which followed. The District Judge also held that the senior widow was entitled to the rents and profits of the estate exclusively, and that the junior widow was only entitled to an annuity of Rs. 25,000 a year.

The Judicial Commissioner, when the suit was before him, sent it back for some further inquiries; and pending those inquiries, the junior widow petitioned that, as she was altogether without means, a receiver should be appointed under s. 503 of Act XIV of 1882. According to the present petition this was refused, but at the suggestion of the Court the senior widow paid Rs. 45,000 to the plaintiff to be accounted for on the decision of the suit. On the appeal coming before the Judicial Commissioner for judgment, he held that, though the adoption was good and valid, both the widows were, on the true construction of the will, equally entitled as Hindu widows.

The decree was that "the decree awarding to the plaintiff Rs. 25,000 per annum be set aside. The senior Maharani will retain the management of the estates. From their net profits she will be entitled to deduct year by year (*a*) the amount

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at which the pay-bills of the house, establishment, charities, &c., stood during the last year of the Maharaja's life, this amount to be ascertained by enquiry in execution ; (b) also such amount as after enquiry in execution may be found suitable for the maintenance and education of the adopted minor. After these deductions are made the plaintiff will recover from the senior Maharani, defendant, a half share of the balance of the net profits of the estates ; she will recover immediately whatever may be found to be due from the date of the Maharaja's death to the date of this decree ; and thereafter she will be entitled to recover year by year, until such time as the Government may see fit to comply with the wishes of the Maharaja expressed in the will"—(that was an expression of a wish that the Court of Wards would undertake the management of the estate during the minority of any son that should be adopted)—“ a half share of the balance of the net profits of the estate, ascertained as above, and the costs of this appeal, amounting to Rs. 1,31,440.”

Leave to appeal from this decree was granted to the senior widow, and upon the same date (22nd June, 1886) an order was made upon her petition applying for stay of execution under s. 608 of Act XIV of 1882, or, in the alternative, for security to be given for the due performance of any order that might be made by Her Majesty in Council. This order neither stayed execution nor provided for the security, but after directing payment of costs amounting to Rs. 63,000, to which the petitioner made no objection, it contained the following : “ And further that execution of and up to a sum of five lakhs of rupees out of the total mesne profits decreed to Maharani Jaipal Kumari be also forthwith had unconditionally, and that execution of the rest of the decree be stayed until the decree-holder lodge good and sufficient security for the remaining balance of the moneys decreed to her.”

Besides the costs the petitioner had paid into Court Rs. 2,85,000, and now asked leave to appeal against this order, as she objected to the sum going into the hands of the junior widow without adequate security for its repayment. It was stated at the Bar that the whole amount had since been paid into Court. The petition asked for an order staying execution and also for special leave to appeal against the above orders of 22nd June, 1886.

Sir *Horace Davey*, Q.C., with whom were Mr. *R. V. Doyne* and Mr. *C. W. Arathoon*.—The order of the 22nd June, 1886, ordering payment of the five lakhs unconditionally, does not follow but varies the decree, which directs an account. But, granting that the Judicial Commissioner had a discretionary power thus to order execution in part, that discretion should have been judicially exercised—s. 608, Act XIV of 1882. Nor was there any evidence before the Court as to what was the real value of the estate and the actual receipts of rents and profits, while, in fact, this large sum exceeds what, in almost any event, the junior widow would be entitled to. The matter which requires redress is that, if in the end the judgment of this Committee should be that the junior widow is not entitled, as the District Judge had held, to more than the annuity, or, at all events, to a less amount than has been decreed by the Appellate Court, she would have to repay money, having however represented herself to be without means of her own, and without due security having been taken for the repayment. Besides the questions already raised under the will in regard to its construction, and the bearing of Act I of 1869 (the Oudh Estate Act) upon it, there might possibly arise another, which also might have reference to the risk incurred in this sum of five lakhs being unsecured. There might arise the question whether, in consequence of the adoption, the widow would not be liable to account to the adopted son through his guardian. It might be that, after the adoption, a different state of things arose; the senior widow should, therefore, be protected. The object of s. 608 had been misapprehended. That object was to maintain, if it was expedient to do, the *status quo* between the parties, pending the appeal to Her Majesty in Council. There has been a mistake as to the principle on which the discretion vested in the Judge should be exercised: even if there has not been, as her petition alleged, an excess of his power as given by the Code of Procedure. The former ground, not the latter, is, however, the one on which the petition should rest. The order, as being an order for execution in anticipation, and operating to the prejudice of the petitioner, should not be enforced.

[LORD HOBHOUSE asked if the Committee was competent to

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advise Her Majesty to order stay of execution, there being no appeal yet preferred. He drew attention to *Sidhee Nazur Ali Khan v. Oojoodhyaram Khan* (1) and *Zerailool Batool v. Hosseinee Begum* (2)] (a).

Sir *H. Davey, Q.C.*—Instead of an order staying execution the petitioner might have leave to appeal from the order of 22nd June, 1886, with only an expression of this Committee's opinion that the money should be retained in Court. That seems to have been the course taken in the cases referred to. At present money is to be handed over in anticipation of accounts, which should not be done.

Mr. *J. Graham, Q.C.*, with whom were Mr. *J. D. Mayne* and Mr. *Theodore Thomas*, for the junior widow.—The present case is distinguishable from the cases referred to, for there is no information as to what took place when the Judicial Commissioner made the order of the 22nd June. This is, in fact, an *ex parte* application on incomplete grounds. As to the sum being large, the litigation involves a great estate. It cannot be assumed that the Judicial Commissioner acted on mere conjecture; and the defect is that this Committee has not before it materials for forming an opinion, besides the difficulty of there being no decree before it in appeal. The conclusion is that the order of 22nd June should not be interfered with, for nothing had been

(1) 10 Moore's I. A., 322.

(2) 10 Moore's I. A., 196.

(a) In the Nawab's case the doubt was whether, where an order had been made by an Appellate Court below, and such order had not been appealed to the Queen in Council, the Judicial Committee had any authority to interfere, although an appeal was pending before them from a previous order of the Appellate Court made in the same suit, remanding the suit to the first Court.

In the other case, within six months after decree, and prior to the admission of the appeal therefrom to England, the S. D. A., upon an *ex parte* application, without notice, issued an execution order putting the decree-holder into possession, and omitted to call for security as provided by s. 4, Reg. XVI of 1797. The S. D. A. rejected an application to put this right as beyond their powers. The Judicial Committee made an order intimating that it was competent to the S. D. A. to require security to be given, notwithstanding execution of the decree had issued.—*Note by Reporter.*

shown that, in imposing conditions which the Judicial Commissioner had power to impose, he wrongly exercised his discretion.

Sir *H. Davey, Q.C.*, in replying, said that it would be enough if the Committee gave leave to appeal from the order of the 22nd June, the appeal to come on with the principal appeal, at the same time intimating its opinion that the balance of the five lakhs ought to remain in Court. The petitioner could then apply to the Court below, which, no doubt, would be guided by an intimation of that kind.

LORD HOBHOUSE.—Their Lordships are of opinion that the interlocutory orders which the petition complains of are such that their Lordships ought to advise Her Majesty to grant leave to appeal from them. It is not competent to their Lordships to make any order as to the stay of execution, but they think it right to say that to them it appears to be the reasonable course that the plaintiff should not, pending the appeal, be put into possession of the large sums in dispute; and probably it is reasonable that she should not receive more than the annuity of Rs. 25,000, which was decreed to her by the first Court; and with that intimation of advice they leave the appellant at liberty to apply to the proper Court in India for the due security of all money paid into the Treasury in obedience to the decree of the Judicial Commissioner.

*Special leave granted: stay of execution refused. Intimation to Court below.*

Solicitors for the petitioner: Messrs. *T. L. Wilson & Co.*

Solicitors for the Maharani Jaipal Kumari: Messrs. *Watkins & Lattey.*

C. B.

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