

that sanction, then he is personally liable on the contract. Under no circumstances do we find that there is any liability imposed on the Secretary of State in Council by an official receiver making a contract. Even if it were shown that he is in any sense an agent of the Secretary of State or the Government, it has not been shown that the official receiver has any authority to make contracts on behalf of the Secretary of State or the Government. We are of opinion that the Regulations of the East India Company drew a distinction between the acts of executive officers for which a certain liability might be assumed under Regulation III of 1793, section XI, and the acts of courts for which Regulation XI of 1822, section 38, disclaimed all responsibility. For the reasons which we have set forth we are of opinion that the Secretary of State in Council was not liable for the alleged act of the official receiver in the present case. Accordingly we consider that the final order of the small cause court Judge dismissing the suit of the plaintiff is an order which has done substantial justice between the parties. We therefore think that this is a case in which we should not interfere and we dismiss this application in revision. We direct that the applicant should pay the costs of the Government Advocate in the present case.

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RAM
SHANKAR
C.
SECRETARY
OF STATE
FOR INDIA.

Before Mr. Justice Iqbal Ahmad.

BISHAMBHAR NATH (APPLICANT) v. ACHAL SINGH
(OPPOSITE PARTY):*

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May, 23.

Civil Procedure Code, section 115—“Court subordinate to High Court”—Civil Procedure Code, section 3—Municipalities Act (Local Act No. II of 1916), sections 318, 319—District Magistrate hearing appeals under section 318 of Municipalities Act—No revision lies to High Court.

The court of the District Magistrate hearing appeals under section 318 of the Municipalities Act, 1916, is not a court subordinate to the High Court within the meaning of section

*Civil Revision No. 29 of 1932.

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115 of the Civil Procedure Code, and therefore no revision lies from its orders to the High Court.

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The mere fact that the District Magistrate is authorised, by section 319 of the Municipalities Act, under certain circumstances to make a reference to the High Court does not make his court a court subordinate to the High Court. Indeed, the High Court can not, after deciding such a reference, enforce compliance with its decision or interfere with the decision of the referring court if it is not in accordance with the High Court's decision.

A court can be said to be subordinate to another court only if the latter has appellate or revisional jurisdiction, or powers of superintendence, given to it by some statutory provision over the former, and the mere authority to decide a reference does not necessarily make the former court subordinate to the latter.

The enumeration of subordinate courts in section 3 of the Civil Procedure Code is not exhaustive and there may be courts, not referred to in that section, that are subordinate to the High Court.

Mr. K. D. Malaviya, for the applicant.

Mr. Baleshwari Prasad, for the opposite party.

IQBAL AHMAD, J. :—A preliminary objection has been taken to the hearing of this application in revision. The order sought to be revised is an order of the District Magistrate of Agra purporting to have been passed by him in exercise of the appellate powers conferred on him by section 318 of the Municipalities Act, Act II of 1916. The application before me purports to be an application under section 115 of the Code of Civil Procedure.

The revisional jurisdiction conferred on the High Court by that section is limited to cases decided by "any court subordinate to such High Court" and it is argued by the learned counsel for the opposite party that, as the court of the District Magistrate when dealing with appeals under section 318 of the Municipalities Act is not subordinate to the High Court, this

Court has no jurisdiction under section 115 of the Code of Civil Procedure to revise the orders passed by the District Magistrate under section 318 of the Municipalities Act.

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The learned counsel for the applicant contends that, in view of the fact that by section 319 of the Municipalities Act the court hearing an appeal under section 318 can make a reference only to the High Court and that on such reference the High Court has not only to express its opinion but to decide the matter referred to it, the court hearing an appeal under section 318 must be deemed to be subordinate to the High Court, and in support of this contention he has placed reliance on the case of *Sadeek Abdulla v. Mahomed Abdulla Hasanalli* (1).

I am unable to agree with the contention of the learned counsel for the applicant. That the officer or the District Magistrate hearing an appeal under section 318 is a court is put beyond doubt by reference to section 320 of the Municipalities Act, and the only question that remains for consideration is whether or not that court is subordinate to this Court within the meaning of section 115 of the Code of Civil Procedure. In the determination of this question no assistance can be had from section 3 of the Code of Civil Procedure for the simple reason that the enumeration of subordinate courts in that section is not exhaustive and there may be courts not referred to in that section that may be subordinate to this Court. It appears to me, however, that a court can be said to be subordinate to another court only if the latter court has appellate or revisional jurisdiction or power of superintendence given to it by some statutory provision over the former court, and that the mere authority to decide a reference does not necessarily make the court making a reference subordinate to the court deciding the same. Further,

(1) A.I.R., 1929 Bom., 190.

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as by section 115 this Court is given revisional powers only with reference to *cases decided* by subordinate courts, that section can only have reference to courts over which this Court has a judicial and not a purely administrative power.

Neither appellate nor revisional powers have been conferred on the High Court over the court of the District Magistrate by the Municipalities Act. On the contrary it is provided by clause (2) of section 321 of that Act that the order of the appellate court under section 318 shall be final. Nor am I aware of any statutory provision conferring on this High Court power of superintendence over courts hearing appeals under section 318 of the Municipalities Act. I, therefore, hold that the decision sought to be revised by this Court is not the decision of any court subordinate to this Court and, as such, the application for revision is incompetent.

In my judgment the Bombay case relied upon by the learned counsel for the applicant has no application to the case before me. It was decided in that case that with regard to questions arising in reference to cases to be stated by the Resident at Aden for the decision of the High Court of Judicature at Bombay under section 8, Aden Courts Act (II of 1864), the Resident's court is subordinate to that High Court within the meaning of section 115 of the Code of Civil Procedure. The learned Judges who decided that case relied on the preamble to, and on section 31 of, the said Act in support of the conclusion arrived at by them. By the preamble it is provided *inter alia* that "it is expedient to provide for the superintendence or revision of certain of such judgments and proceedings by the High Court at Bombay", and by section 31 the High Court at Bombay is authorised and empowered "to make and issue general rules for regulating the practice and proceedings of the court of the Resident and also

to frame forms for every proceeding in the said court, etc." In view of these provisions the learned Judges held that the court of the Resident at Aden was a court subordinate to the High Court of Bombay within the meaning of section 115 of the Code of Civil Procedure, notwithstanding the fact that by section 15 of the said Act it is provided that the Bombay High Court is not a court of appeal as regards the decisions by the court of the Resident at Aden.

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The reasons assigned by the learned Judges of the Bombay High Court for holding that that court has revisional powers over the Resident's court at Aden have no application to the case before me. Provisions analogous to the provisions contained in the Aden Courts Act are not to be found in the Municipalities Act, and, as already stated, the court of the District Magistrate under the Municipalities Act has not by any statutory provision been made subordinate to the High Court in matters decided by it under the Municipalities Act.

The mere fact that under certain circumstances the District Magistrate is authorised to make references under the Municipalities Act to this Court cannot, in my opinion, be a justification for holding that the District Magistrate is subordinate to this Court in matters coming under the Municipalities Act. A reference has been made in the Bombay case to the decision in *In the matter of John Thomson* (1), in which it was observed that a reference was "a modified form of appeal", and the learned Judges of the Bombay High Court appear to have been inclined to the view that the mere fact that a court is empowered to entertain a reference made by another court makes the court making the reference subordinate to the court deciding the same. With all respect, I am unable to agree with this view. In the absence of a definite statutory provision to the effect

(1) (1870) 6 Beng. L.R., 180.

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that the decision of the court making the reference is to be in accordance with the decision of this Court on the matter referred to it, I can discover no justification for holding that the court making the reference is subordinate to this Court. There is no such provision in the Municipalities Act. The appellate court under that Act is no doubt empowered to make a reference to the High Court for the decision of the point on which it entertains doubts, but it is not bound to decide the point referred to this Court in accordance with the decision of this Court. After deciding the matter referred to it under that section this Court cannot enforce compliance with its decision, and even if the appellate court in deciding an appeal under section 318 decides the point referred to this Court otherwise than in accordance with its decision, this Court cannot interfere with that decision. To me there appears to be no analogy between a reference and an appeal. An appeal is preferred by an aggrieved party, whereas a reference is made not by a party but by a court. The decision of the subject matter of appeal is by the court entertaining the appeal, whereas the decision of the matter about which a reference is made is not necessarily by the court deciding the reference.

For the reasons given above I hold that the court of the District Magistrate, while deciding an appeal under section 318 of the Municipalities Act, is not subordinate to this Court and, accordingly, no revision lies to this Court, and the preliminary objection is well founded. I dismiss this application with costs.