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GOODAL
v.
GOODAL

next friend is not required over the age of 18. The petitioner is over 19 and therefore she is not a minor within the meaning of section 49.

There will be a decree *nisi* in favour of the petitioner. The petitioner will get her costs of the suit from the respondent. [The question of alimony *pendente lite* was then decided.]

MISCELLANEOUS CIVIL

Before Sir Lal Gopal Mukerji, Acting Chief Justice, and
Mr. Justice Bennet

1932

December, 16

IN THE MATTER OF A PLEADER*

*Civil Procedure Code, section 109 (c)—“Otherwise a fit case”
—Letters Patent, paragraph 30—Appeal to Privy Council—
Order suspending a pleader—Practice—Security for costs—
Rules of High Court, chapter XVII, rule 1(b).*

An order of the High Court suspending a pleader from practising for a period of six months was sought to be taken in appeal to His Majesty in Council. *Held* that in view of the consistent practice of the Court in such cases leave to appeal may be granted, either under section 109(c) of the Civil Procedure Code or under paragraph 30 of the Letters Patent.

As it appeared that several arguable points of law were raised in the proposed appeal and that the matter was of general public importance, the case was certified as being a fit one for appeal to His Majesty in Council.

Held, also, that security for costs was obligatory and in view of rule 1 (b) of chapter XVII of the High Court Rules the minimum amount to be furnished was Rs.4,000. Even if the application for leave was under paragraph 30 of the Letters Patent, the leave would be subject to the same rules as might be in force for filing appeals in general to His Majesty in Council.

The security was in this case permitted to be in immovable property.

* Application No. 54 of 1932, for leave to appeal to His Majesty in Council.

Messrs. *B. Malik* and *G. S. Pathak*, for the applicant.

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Mr. *Muhammad Ismail Khan* (Government Advocate), for the Crown.

MUKERJI, A. C. J., and BENNET, J. :—This is an application for leave to appeal to His Majesty in Council against an order of this Court suspending the applicant, who is a legal practitioner, from practising for a period of six months. By another order the operation of the order has been suspended till the leave is granted and, in case the leave is granted, till the decision of the case by His Majesty in Council.

The facts of the case are that in respect of a certain incident which happened in the court of the Judge of Small Causes at Allahabad the petitioner, who was a party to a suit as a defendant, made certain remarks which were held to be derogatory to the dignity of the High Court. On account of those remarks the applicant was punished with a fine of Rs.75 for contempt of court by a Bench of this Court, and he was also directed to pay the costs of the Government, which came to Rs.80. Later on, another Bench of this Court issued notice to the applicant calling on him to show cause why he should not be suspended or otherwise dealt with under section 12 of the Legal Practitioners Act, inasmuch as his conviction being of a criminal offence implied a defect of character. On that rule being heard, the order proposed to be appealed against was passed.

The applicant wishes to go before His Majesty in Council, and the first question that arises is whether any leave to appeal may be granted by this Court. In similar cases leave has been granted by this Court, and the case directly in point is that of *In the matter of an Advocate of Benares* (1).

The learned Government Advocate has drawn our attention to several decisions of different High Courts,

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one from Patna, another from Madras, and a third from Calcutta, where it was held that in the case of an advocate or attorney being suspended from practice the High Court was not authorised to grant leave to appeal to His Majesty in Council. In the case decided by this Court recently, quoted above, it was pointed out that in three earlier cases leave had been granted by this Court, presumably under section 109 (c) of the Civil Procedure Code. In view of the fact that the practice of this Court has been consistent, we do not propose to depart from that practice, and we hold that leave may be granted under section 109 (c) of the Code of Civil Procedure. We may point out that if leave cannot be granted under that section of the Code of Civil Procedure, it may be granted under paragraph 30 of our Letters Patent.

As regards the merits, we have to declare, whether leave is to be granted under section 109 (c) of the Code of Civil Procedure or under paragraph 30 of the Letters Patent, that the case is a fit one for appeal.

The facts stated above make it abundantly clear that this matter should go before His Majesty in Council for the final word. In a similar case in which leave was granted, namely, *In the matter of an Advocate of Benares* (1), leave was granted, although the facts were not stated. One of us was a party to that case, and in our opinion this particular case before us is a much stronger case.

Several points have been taken in the proposed memorandum of appeal, and we are of opinion that each and every one of those points are capable of being argued with some force before His Majesty in Council. Beyond stating this we need not go further, because it is not for us to decide whether the order proposed to be appealed against is a correct order or not.

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The case is a fit one for appeal not only from the point of view of the applicant, but also from a general point of view.

The next point that remains to be considered is whether in the case of leave being granted, security should be taken at all, and, if taken, whether it should be Rs.4,000, and further whether security may be furnished in this particular case in immovable property.

Mr. *Malik* for the applicant has argued that in a case like this there is no provision for security being furnished. If the application is one under section 109 (c) of the Code of Civil Procedure security has to be furnished. If the application be one under paragraph 30 of the Letters Patent of our High Court, even then the leave will be subject to such rules as there may be in force for filing appeals in general before His Majesty in Council. These rules would be the rules which regulate the filing of appeals in ordinary civil cases. We decide, therefore, that security must be furnished.

Then comes the question of amount. Rule 1 (b), chapter XVII of the High Court Rules says that the security shall in ordinary cases amount to Rs.4,000. It further says that it may be increased to Rs.10,000. We take it, therefore, that the minimum amount to be furnished is Rs.4,000. Mr. *Malik* has argued that in cases like this it has never been the practice of the High Court to instruct counsel to oppose the appeal before His Majesty in Council. This may be so, but this Court cannot be bound by what has been done before, and if it chooses that the application should be opposed, the question of cost would appear to be important.

The next question is whether we should permit the applicant to furnish security in immovable property. The application is supported by an affidavit which states that the applicant was doing some business

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which he closed down in order to join the profession of law, that he joined the profession only in March, 1932, and it was on 1st April, 1932, that he uttered the words which have brought on him all this trouble. The affidavit further goes on to say that he has not got any cash or Government promissory notes, but he is in a position to furnish immovable property of sufficient value for security. We have heard the learned Government Advocate on the point and he leaves the matter, and very wisely too, in our hands. We think that this is a case in which an exception may be made, and the applicant may be permitted to furnish security in immovable property.

The result is that we allow the application and certify to His Majesty in Council that this is a fit case for an appeal before His Majesty. We direct that security be furnished within the time limited by the law in the amount of Rs.4,000, but it may be furnished in sufficient immovable property. The document shall be by way of a mortgage created in favour of the Registrar of the High Court, and it must be produced in Court within the time permitted by the law.

Before Mr. Justice Young

LIAQAT HUSAIN v. OFFICIAL LIQUIDATOR *

1932
December, 16

Companies Act (VII of 1913), sections 235, 280—Misfeasance summons—Security for costs of opposite party—Public policy.

A misfeasance proceeding under section 235 of the Companies Act is merely an examination by the court into the conduct of an officer of the company, and as a result of that examination the court may order the officer to restore the money or the property of the company, as the court may think just. Such proceedings cannot be said in any way to be "a suit or other legal proceeding" within the meaning of section 280 of the Act.

* Application in Miscellaneous Case No. 369 of 1928.