

for applying for a discharge even after the expiry of the period originally fixed.

If the annulment of the adjudication be not automatic, then the court must always have power to extend time even after the expiry of the original period. In this Court two learned Judges have held in *Maharaj Hari Ram v. Sri Krishan Ram* (1) that there is no automatic annulment of an adjudication. If this view be correct then the power of the court to extend time after the expiry of the original period does exist.

The view which we are taking is amply supported by authorities of other courts, namely *Abraham v. Sookias* (2), *Gopal Ram v. Magni Ram* (3) and *Palani Goundan v. Official Receiver of Coimbatore* (4). We see no reason to go against so many authorities with which we, with all respect, agree. The result is that the application fails on the merits and is hereby dismissed with costs.

MATRIMONIAL JURISDICTION

Before Mr. Justice Young

GOODAL (PETITIONER) *v.* GOODAL (RESPONDENT) *

Divorce Act (IV of 1869), section 7—Age of consent—Marriage of girl of 13—Validity—Divorce Act (IV of 1869), sections 3(5), 45, 49—“Minor”—Age of majority—Petition for divorce by girl of 19—Whether next friend necessary.

A marriage among Anglo-Indians domiciled in India took place in October, 1926, the bride being just 13 years old. On the question whether the girl was capable of giving a valid consent to her marriage it was held that for a Christian marriage in India the age of consent at the date of this marriage would be 12 for the girl, that being the then state of the law in England. There was nothing either in the Indian Divorce Act or the Christian Marriage Act as regards the age of consent; and under section 7 of the Indian Divorce Act the Indian High Courts had to act, subject to the

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* Matrimonial Suit No. 8 of 1932.

(1) (1926) I.L.R., 49 All., 201.

(2) (1923) I.L.R., 51 Cal., 337.

(3) (1927) I.L.R., 7 Pat., 375.

(4) (1929) I.L.R., 53 Mad., 288.

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provisions of that Act, according to the principles and rules on which the Divorce Court in England for the time being acted.

A petition for divorce was filed by the wife, an Anglo-Indian domiciled in India and of 19 years of age. On the question whether under section 49 of the Divorce Act the petitioner was a minor and the petition had to be filed through a next friend, it was *held* that having regard to sections 3 (5) and 45 of the Divorce Act and to the fact that under the Civil Procedure Code a next friend was not necessary for a suitor of over 18 years of age, the petitioner was not a minor within the meaning of section 49 and a next friend was not required.

Messrs. *O. M. Chiene* and *Krishna Murari Lal*, for the petitioner.

Mr. *Hari Pal Varshni*, for the respondent.

YOUNG, J. :—This is the petition of Mrs. Beatrice Goodal against her husband, Havelock Charles David Goodal, for dissolution of her marriage to him on the ground of adultery, desertion and cruelty. No written statement has been filed. Counsel for the respondent says he is not in a position to put his client in the box. The petition is undefended. The parties are Anglo-Indians domiciled in India, and last resided together at Cawnpore. This Court therefore has jurisdiction to hear and decide this petition. The marriage took place at All Saints Cathedral, Allahabad, on the 2nd October, 1926. The petitioner was born on the 27th August, 1913. When this fact was brought to my attention on examining the pleadings I added an issue : “Was there a valid marriage; was the petitioner able to consent to the said marriage?” At the time of the marriage the petitioner was just 13 years old. The petitioner was married at this early age because the respondent seduced her under promise of marriage. The mother thought that it would be better under the circumstances to have the marriage celebrated. She gave the petitioner’s age as sixteen.

There appears to be nothing either in the Indian Divorce Act or in the Indian Christian Marriage Act as regards the age of consent. Under section 7 of the

Indian Divorce Act the Indian High Courts have to act, subject to the provisions contained in that Act, according to the principles and rules on which the Court for divorce and matrimonial causes in England for the time being acts and gives relief. It appears to me therefore that for a Christian marriage in India the age of consent at the date of this marriage would be 12 in the case of a girl, that being the then state of the law in England at the date of this marriage. The answer to this issue is therefore that this marriage was a valid marriage and the petitioner consented to it.

[With regard to the other issues of adultery, desertion and cruelty the finding was that all of these were established.]

The wife is therefore entitled to a decree *nisi*.

Mr. *Haripal Varshni*, who appears here on behalf of the husband, has drawn my attention to section 49 of the Indian Divorce Act, which enacts that "where the petitioner is a minor, he or she shall sue by his or her next friend to be approved by the court; and no petition presented by a minor under this Act shall be filed until the next friend has undertaken in writing to be answerable for costs." He contends that the petitioner being under 21 years of age is a minor within the meaning of this section, and that therefore the petition is bad as the petitioner is not suing through her next friend. Although no defence has been entered in this case and Mr. *Haripal Varshni* has really no *locus standi* in the Court, I have allowed him as *amicus curiae* to draw my attention to this. In my opinion there is nothing in the point. Under section 3(5) "minor children" other than those of "native" parents are defined as unmarried children who have not completed the age of 18 years. Although this does not apply strictly to the petitioner, who is married, it is a guide. In any event the Civil Procedure Code, by section 45 of the Divorce Act, applies to petitions under the Divorce Act. Under that Code a

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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.