## APPELLATE CIVIL

*Before Sir John Thom, Chief Justice, and Mr. Justice Ganga Nath*

TARA CHAND AND OTHERS (DEFENDANTS) *v.* MADHO PRASAD AND OTHERS (PLAINTIFFS)* 1939 *November*, 16

*Letters Patent, section* 10—"*Judgment*"—*Order refusing stay of execution does not amount to* "*judgment*"—*No appeal lies.*

According to the principle which was approved in the Full Bench case of *Shahzadi Begam* v. *Alakh Nath* (1), an order refusing an application for stay of execution does not amount to a "judgment" within the meaning of section 10 of the Letters Patent, and no appeal lies under that section from such an order.

Dr. *S. N. Sen* and Messrs. *P. L. Banerji, Gopi Nath Kunzru* and *Din Dayal,* for the appellants.

Messrs. *S. K. Dar* and *S. N. Seth,* for the respondents.

THOM, C.J., and GANGA NATH, J.:—These are two connected appeals under the Letters Patent against the order of a learned single Judge of this Court refusing an application for stay of execution of a decree. Both the appeals may be conveniently disposed of in one judgment.

A preliminary objection to the appeal has been taken by the respondents. It was contended that under section 10 of the Letters Patent no appeal lies from an order of a learned single Judge of this Court refusing an application for stay of execution.

An appeal does lie under section 10 of the Letters Patent if the order appealed against is a "judgment" within the meaning of that section. PAGE, C.J., in the case of *Dayabhai Jiwandas* v. *Murugappa Chettiar* (2) observed "What is the meaning of 'judgment' in the Letters Patent of the Indian High Court? That is a question over which controversy has raged in India for

*Appeal No. 73 of 1939, under section 10 of the Letters Patent.

(1) (1935) I.L.R. 57 All. 983. (2) (1935) I.L.R. 13 Rang. 457(470).

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nearly seventy years. It is still unsettled." During the hearing of this appeal we have been referred to a large number of earlier decisions upon the point now under consideration and in our view it appears that as the discussion has proceeded through judgment after judgment confusion has become worse confounded. Except in the Rangoon case above referred to no complete definition of a "judgment" as that term is used in section 10 of the Letters Patent has been attempted. After an exhaustive consideration of the authorities a Bench of the Rangoon High Court consisting of seven Judges in the case already noticed held that "The word 'judgment' in the Letters Patent of the Indian High Courts means and is a decree in a suit by which the rights of the parties at issue in the suit are determined."

So far as this Court is concerned it is impossible to extract from many decisions upon the point a definition of "judgment" as that term is used in section 10 of the Letters Patent of the Court. The latest decision upon the point is the decision of a Full Bench in the case of *Shahzadi Begam* v. *Alakh Nath* (1). In that case it was decided that an order of a single Judge dismissing an application under section 5 of the Limitation Act and refusing to extend time is not a "judgment" within the meaning of clause 10 of the Letters Patent and accordingly no appeal lies from that order. This is a decision which is binding upon us. If an order refusing an application under section 5 of the Limitation Act is not a "judgment" within the meaning of clause 10 of the Letters Patent, *a fortiori* an order refusing an application for stay of execution of a decree pending the disposal of an appeal is not a "judgment" within the meaning of that clause. The refusal of an application under section 5 has the effect of finally, once and for all, determining the rights and liabilities of the parties to the litigation in which the application is made. The unsuccessful applicant is finally and irrevocably denied the relief he claims in the suit. On the other hand so

(1) (1935) I.L.R. 57 All. 983.

far as the refusal of an application for stay of execution is concerned such an order bears no such element of finality.

We do not consider it necessary or expedient to review the grounds upon which the learned Judges who constituted the Full Bench which decided the case of *Shahzadi Begam* v. *Alakh Nath* (1) arrived at their decision. It is sufficient to say that the decision is binding upon us and that in our judgment it covers the question which we are now called upon to decide.

We would observe, however, that reference has been made to the term "judgment", as that term is used in the Letters Patent of the Indian High Courts, in two decisions of the Privy Council. In the case of *Sabitri Thakurain* v. *Savi* (2), after considering the provisions of section 104 of the Code of 1908 by which the earlier Code of 1882 was amended their Lordships observed: "This raised the question neatly, whether an appeal, expressly given by section 15 of the Letters Patent and not expressly referred to in section 588 of the Code of 1882, could be taken away by the general words of section 588 'and from no other such orders'. The change in the wording of section 104 of the Act of 1908 is significant, for it runs 'and, save as otherwise expressly provided . . . . . by any law for the time being in force, from no other orders.' Section 15 of the Letters Patent is such a law, and what it expressly provides, namely an appeal to the High Court's appellate jurisdiction from *a decree of the High Court in its original ordinary jurisdiction,* is thereby saved." The terms of section 15 of the Letters Patent of the Calcutta High Court to which reference was made in the observations above quoted are identical with the terms of section 10 of the Letters Patent of this Court. This observation does not appear to have been brought to the notice of the Full Bench which decided the case of *Shahzadi Begam* v. *Alakh Nath* (1). Again in the judgment of the Privy

(1) (1935) I.L.R. 57 All. 983. (2) (1921) I.L.R. 48 Cal. 481(488).

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Council in the case of *Sevak Jeranchod Bhogilal* v. *Dakore Temple Committee* (1) it is observed that "The term 'judgment' in the Letters Patent of the High Court means in civil cases a decree and not a judgment in the ordinary sense." So far as this observation is concerned it is true that it has been interpreted by a Full Bench of this Court in *Sital Din* v. *Anant Ram* (2) and it has been argued with some force that that interpretation has been approved by the Full Bench in the later case of *Shahzadi Begam* v. *Alakh Nath* (3). It would appear from the observations in the judgments in these cases that it was not considered that the Privy Council intended to lay down the general proposition that no appeal lay under section 10 of the Letters Patent against the order of a single Judge of this Court unless the order amounted to a decree. However that may be, in the earlier Privy Council case of 1921 section 15 of the Calcutta High Court Letters Patent was interpreted in the sense that no appeal lay against the order of a learned single Judge unless that order amounted to a decree. We do not regard it as necessary to consider whether the Full Benches of this Court would have arrived at a different decision had the observations of the Privy Council in *Sabitri Thakurain* v. *Savi* (4) been brought to their notice. In our judgment the principle which was approved in the case of *Shahzadi Begam* v. *Alakh Nath* (3) clearly covers the point which we are called upon to decide in this appeal.

In the result we hold that no appeal lies against the decision of a learned single Judge refusing an application for stay of execution.

Both appeals are accordingly dismissed with costs.

(1) (1925) 23 A.L.J. 555(558). (2) (1933) I.L.R. 55 All. 326.
(3) (1935) I.L.R. 57 All. 983. (4) (1921) I.L.R. 48 Cal. 481.