APPELLATE CIVIL.

Before Mr. Justice Baguley, and Mr. Justice Ba U.

MAUNG YAN AUNG

v.

OO MU & SONS.*

1935

Jan. 15.

Pauper—Permission to appeal in forma pauperis—*Security for costs of appeal.*

A person who has been granted permission to appeal as a pauper ought not to be called upon to furnish security for the costs of the appeal.

Hafizan v. *Abdul Karim*, 12 C.W.N. 163 ; *Khemraj* v. *Kisanlala*, I.L.R. 42 Bom. 5 ; *Ma Gun* v. *Tha Hnyin*, 8 L.B.R. 387 ; *Nazim* v. *Abdul Hamid*, I.L.R. 3 Lah. 30 ; *Nusserooddeen* v. *Biswas*, 17 W.R. 68—*followed.*

Narayana Rao v. *Veerayya*, I.L.R. 56 Mad. 323 ; *Saldanha* v. *Hart*, I.L.R. 43 Mad. 902—*dissented from.*

K. C. Sanyal for the appellant.

Tambe for the respondent.

BAGULEY and BA U, JJ.—This application arises out of a pauper appeal. The appellant has been granted permission to appeal as a pauper, and the respondent asks that he be called upon to give security for costs. There is no reported ruling of this High Court as to whether security can be demanded from a pauper appellant. The latest ruling of a Court in this Province is a ruling of the late Chief Court of Lower Burma, *Ma Gun* v. *Tha Hnyin* (1), in which a Bench of the Chief Court held that Order 25, rule (*1*) (*3*), does not apply in the case of a woman who has been permitted under Order 33, to sue as a pauper.

Mr. Tambe for the respondent relies upon the Madras practice as shown by *B. F. Saldanha* v.

* Civil First Appeal No. 193 of 1934 from the judgment of the District Court of Mandalay in Civil Regular No. 1 of 1934.

(1) 8 L.B.R. 387.

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Henry Hart (1) and *Narayana Rao* v. *Veerayya* (2). The former ruling is very short, gives no reasons and really amounts to no more than saying that the Madras High Court has in the past allowed the practice of calling upon paupers to furnish security, and even though the Bombay High Court might take a different view the Bench saw no reason to doubt the correctness of their own practice. In *Narayana Rao*'s case the practice of the Madras High Court was again referred to and followed, but it was clear from the general trend of the judgment that the point which the learned Chief Justice was trying hard to impress was that permission to appeal as a pauper should not ordinarily be given, and he points out that leave to appeal as a pauper should not be given merely because the appellant appears to have an arguable case. It may be because of the frequency with which the applications for leave to appeal as paupers were granted in Madras that they found it necessary to differ from the other High Courts with regard to demanding security for costs from paupers. Mr. Tambe also quotes *Lim Pin Sin* v. *Eng Wan Hock* (3), a case in which a pauper was ordered to pay adjournment costs, as showing that a pauper is subject to all the liabilities of an ordinary plaintiff except that with regard to the payment of Court-fees. This may be the case, but in view of the fact that leave to appeal as paupers is not granted except when on a perusal of the memorandum of appeal and the judgment the Court is definitely of opinion that the judgment appealed against is contrary to law or otherwise erroneous or unjust, we do not think that this case alone is sufficient to warrant us in following the Madras High Court practice.

(1) (1920) I.L.R. 43 Mad. 902. (2) (1933) I.L.R. 56 Mad. 323.
(3) (1928) I.L.R. 6 Ran. 561.

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The practice of the Calcutta High Court appears to be the same as that of the late Chief Court of Lower Burma, *vide Mussamat Hafizan* v. *Abdul Karim* (1). This is a ruling dated 1907, and relies on the ruling in *Nusseroodeen Biswas* v. *Ujjul Biswas* (2), which dates as long ago as 1871, and appears to have been overlooked in the Madras rulings. Bombay agrees with Calcutta, *vide Khemraj Shrikrishnadas* v. *Kisanlala Surajmal* (3). Scott C.J. in his judgment mentioned the Calcutta cases and also relied on *Wille* v. *St. John* (4) stating that he considered the ruling applicable on this point. In *Nazim* v. *Abdul Hamid* (5) a Bench of the High Court of Lahore followed the Calcutta and Bombay practice, and dissented from the Madras rulings already quoted.

We see no reason for abandoning the practice of the late Chief Court of Lower Burma when it is in consonance with that of the High Courts of Calcutta, Bombay and Lahore. Possibly, owing to the frequency with which it admits pauper appeals, Madras has found it necessary to come to a different conclusion.

We, therefore, refuse to call upon the appellant to furnish any security. We do not order any costs on this application.

(1) (1907) 12 C.W.N. 163.
(2) (1871) 17 W.R. 68.
(3) (1917) I.L.R. 42 Bom. 5.
(4) (1910) 1 Ch. 701.
(5) (1921) I.L.R. 3 Lah. 30.