

The record of the Small Cause Court will be returned to that Court before 11 o'clock to-morrow morning with an intimation that the application for a mandamus has been refused.

1935  
L. H.  
WELLINGTON  
v.  
THE  
CHIEF JUDGE,  
RANGOON  
SMALL CAUSE  
COURT.  
LEACH, J.

## APPELLATE CIVIL.

Before Sir Arthur Page, Kt., Chief Justice, and Mr. Justice Ba U.

### MA AHMA v. MA KHIN THAN.\*

1935  
Feb. 13.

*Advocate's authority—Compromise of suit—Express instructions of client—Doubt as to client's apprehension of terms of compromise—Court's discretion.*

Advocates of the High Court have ostensible authority to compromise a suit.

*Askaran Choutmal v. The E. I. Ry. Co., I.L.R., 52 Cal. 386; Sourendra Nath Mitra v. Tarubala Dasi, 57 I.A. 133—referred to.*

But in a case where an advocate has taken express instructions from his client, and it is doubtful whether the client appreciated that he has consented to a compromise in the same sense in which it was understood by the advocate, it is open to the Court to refuse its assistance for the purpose of implementing the compromise if in its discretion it thinks it is right and proper to do so.

*Neale v. Gordon Lennox, 1902 A.C. 465—referred to.*

*Ba Han* for the applicant.

*Tha Kin* for the respondent.

PAGE, C.J.—This is an application for an order compromising an appeal to His Majesty in Council upon certain terms which have been signed by the learned advocates for the parties. It is dated 30th January, 1935. On the 31st January the respondent wrote to Mr. Moore, her advocate, the following letter through her son.

\* Civil Misc. Application No. 12 of 1934 arising out of Civil First Appeal No. 91 of 1933 of this Court.

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MA AHMA

v.

MA KHIN  
THAN.

PAGE, C.J.

" 121/43rd Street.

Rangoon, dated 31-1-35.

DEAR MR. MOORE,

Being instructed by my mother I wrote this letter to you. She told me that she could not consent the figures which you have shown her yesterday.

She said that she could only consent if she get Rs. 11,000 (Rupees Eleven thousand only) in cash. She told me to request you not to put up any application to the Court without her consent."

Now, it cannot be doubted that the learned advocates of this Court have ostensible authority to compromise a suit [*Sourendra Nath Mitra and others v. Tarubala Dasi* (1) and *Askaran Choutmal v. The E. I. Ry. Co.* (2)]. But in cases where they have taken express instructions from their clients, and it is doubtful whether the client appreciated that she had consented to a compromise in the same sense in which it was understood by the learned advocate, it is open to the Court to refuse its assistance for the purpose of implementing the compromise if in its discretion it thinks it is right and proper to do so [*Neale v. Gordon Lennox* (3)]. The respondent to the appeal, who had instructed Mr. Moore to appear for her throughout this litigation, stated that she did not understand English, and that on the 30th January at an interview with Mr. Moore he spoke in English and she spoke in Burmese, his words being interpreted by her son. There is no doubt, as Mr. Moore stated, that there was an Anglo-Indian present called Mr. Drew; but I do not understand that he interpreted what Mr. Moore said to the respondent or what the respondent said to Mr. Moore. I have not the slightest doubt that

(1) (1930) 57 I.A. 133.

(2) (1925) I.L.R. 52 Cal. 386.

(3) (1902) A.C. 465.

Mr. Moore understood that this lady was consenting finally to a compromise in the terms that he related to the appellant's advocate, Dr. Ba Han. I am also satisfied that Mr. Moore acted not only with propriety but in a manner which he had reason to believe was in the best interest of his client. When the Court, however, is asked to implement a compromise entered into in circumstances such as those obtaining in the present case, and there is reason to suppose that there was some misunderstanding between a party and that party's advocate,—the learned advocate being under the impression that the party was expressly assenting to a compromise on certain terms while the party did not appreciate that she was consenting to a compromise in the same sense—it is open to the Court to refuse to give effect to the compromise. Having regard to the fact that on the next day the respondent wrote to her advocate that she could not consent to the figures which had been shown to her on the previous day, and would only consent to settle the case if she received Rs. 11,000; the fact that while Mr. Moore spoke in English she spoke in Burmese, and the further fact that she did not understand English, in my opinion, this is a case in which the Court ought not to compel her to abide by the settlement which was effected with the opposite party by her learned advocate.

In these circumstances the application is dismissed. We make no order as to costs.

BA U, J.—I agree.

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PAGE, C.J.