

APPELLATE CIVIL.

Before Mr. Justice Baguley, and Mr. Justice Mosely.

1938

Jan. 25.

MAUNG THA TUN v. WADDADER.*

High Court's power of interference—Pleader prevented by Court from appearing for a party—Order passed after full consideration—Ends of justice unaffected—No illegality or material irregularity—Civil Procedure Code, ss. 115, 151—Government of India Act, s. 107—Government of Burma Act, s. 85.

Where a Court on a consideration of the affidavits and arguments decides that a pleader should not appear on behalf of a party as he had previously acted on behalf of the opposite party in connection with the same litigation, the High Court will not interfere with such order if there is nothing to show that the ends of justice will thereby be affected or that the Court acted illegally or with material irregularity in the exercise of its jurisdiction.

The powers of interference given to the High Court by s. 85 of the Government of Burma Act are more restricted than the powers given under s. 107 of the Government of India Act, 1919.

Maung Sein Gyi v. Maneckjee, I.L.R. 8 Ran. 44; *Ko Ko Gyi v. U San Mya*, I.L.R. 8 Ran. 446, distinguished.

Sein Tun Aung for the applicant.

Ba Han (with him *Zakaria*) for the respondent.

BAGULEY, J.—In the suit out of which this application arises, on November 22, 1937 the Assistant District Judge of Akyab passed an order directing that a certain member of the Bar of Akyab, Maung Tha Tun, should not be allowed to appear on behalf of the plaintiffs. The order was passed in the following circumstances. The parties to the case had been having disputes for some time, and the matter had been referred to arbitration. Before orders had been finally passed by the arbitrators, Waddader asked Maung Tha Tun to write a letter for him to the arbitrators, or to the opposite party. Subsequently the arbitrators made an award,

* Civil Misc. Application No. 93 of 1937 from the order of the Assistant District Court of Akyab in Civil Regular No. 13 of 1935.

and the suit out of which the present application arises is a suit to file that award. In the course of the proceedings Maung Tha Tun appeared on behalf of the plaintiffs, and Waddader, as a defendant, objected to him appearing on the ground that at the time that he asked Maung Tha Tun to write this letter he had to give him instructions, and those instructions or his recollection of the instructions, he fears, may be used by Maung Tha Tun to his detriment if he appears in the case. The application was supported by an affidavit, to which Maung Tha Tun filed a reply, unsupported by any affidavit. Waddader filed another affidavit, after which Maung Tha Tun filed an affidavit, and it is noticeable that the affidavit says very much less than was said in the original reply. In the original reply he says that Waddader consulted him merely as a friend, and he says he received no fees, either as consultation or as retaining fees. Waddader definitely says that he paid him Rs. 12 as fees for drafting the letter, to which Maung Tha Tun, when he had to file an affidavit in reply, makes no answer. In any event, the learned Assistant District Judge, on a consideration of the affidavits and arguments, decided that Maung Tha Tun should not appear on behalf of the plaintiffs. It is in consequence of this order that the present application has been filed.

The first thing that we have to consider is whether an application of this nature lies. The application is headed as one under section 151 of the Civil Procedure Code. Section 151 is, of course, the section which retains the Court's inherent powers, or what are generally described as such. It reads :

“ Nothing in this Code shall be deemed to limit or otherwise affect the inherent power of the Court to make such orders as may be necessary for the ends of justice or to prevent abuse of the process of the Court.”

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This order passed by the learned Assistant District Judge cannot, I think, by any stretch be one which will affect the ends of justice. Maung Tha Tun is not the only capable member of the Bar at Akyab. The Bar there is fairly large, or used to be when I knew it, and to say that justice is being denied to a party because one particular lawyer is prevented from appearing for him is absurd. It is said that this application was headed as being under section 151 because the office had held that it could not lie under section 115, the section under which the applicant's counsel wished to file it. I can however see no grounds for holding that an application of this sort would lie under section 115 on the allegation made by the defendant, namely, that Maung Tha Tun who was appearing for the other side had previously been engaged by him in connection with the same litigation. If this allegation was made out, the Court had complete jurisdiction to deal with it, and if necessary to debar Maung Tha Tun from appearing, and the Court was exercising a jurisdiction vested in it. Both sides were heard, affidavits were filed by both sides and an order was passed in the regular way. I see no reason for supposing that the Court acted illegally or with material irregularity in the exercise of its jurisdiction. Whether it acted rightly or wrongly is quite another matter.

As a last resource the general powers of supervision of this Court have to be appealed to. These are under section 85 of the Government of Burma Act. It is quite true that under the corresponding section of the Government of India Act (namely, section 107) Courts have interfered in cases like this, and one of these cases appear in the published reports, namely *U Ko Ko Gyi v. U San Mya* (1). At the time, however, that that judgment was passed the old section 107 of the Government

of India Act was in force, and the powers of interference given by section 107 of the Government of India Act are much wider than the powers given by section 85 of the Government of Burma Act. The first part of section 85 is the same as the old section 107, but the second part of it runs as follows :

“ Nothing in this section shall be construed as giving to the High Court any jurisdiction to question any judgment of any inferior court which is not otherwise subject to appeal or revision.”

This sub-clause, in my opinion, prevents the High Court from dealing with applications of this nature although they were certainly dealt with under the old section.

Another case was quoted to us [*Maung Sein Gyi v. J. Maneckjee* (1)], but this case is not on all fours with the present case, because in that case the question was whether a certain advocate should be allowed to appear before this Court in an appeal arising out of a regular suit in which he had formerly appeared on the other side.

I would hold, for these reasons, that the present application does not lie. It is dismissed with costs, advocate's fee five gold mohurs, to be paid by the present applicant personally.

MOSELY, J.—I agree.

[In Civil Misc. Application No. 40 of 1938 the applicant applied for a review of the judgment. The Court rejected the application *in limine* (7th April 1938). The applicant again applied in Civil Misc. Application No. 42 of 1938 for a review of the order dismissing the application for review. The application was set down for admission and after hearing the advocate the Court dismissed the application.]

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