

LETTERS PATENT APPEAL.

Before Shadi Lal, C. J. and Abdul Qadir J.

MUSSAMMAT PREM KAUR AND OTHERS,

Appellants

versus

BANARSI DAS (PETITIONER) Respondent.

Letters Patent Appeal No. 42 of 1933.

Letters Patent Appeal—from order of a Single Bench—dealing with a matter of discretion.

The appellant (mother of the boy) lodged an appeal to the High Court against the order of the District Judge, Lahore, passed under the provisions of the Guardians and Wards Act, deciding that her eldest boy Kuldeep should be restored to the custody of his father. The appeal was admitted to a Single Bench and the appellant made an application asking the Court to stay execution of the order regarding Kuldeep pending the decision of the appeal. The application was dismissed by a Single Bench. In an appeal under the Letters Patent against the order dismissing the application :

Held, that the appeal must fail on the short ground that the appellant did not succeed in establishing a strong case which would justify the Letters Patent Bench in interfering with the discretion of a single Judge of the Court.

The Lahore High Court, while not going so far as to hold that an order dealing with a matter of discretion is not appealable, has laid down that, though an appeal is competent, the fact that the making of the order was a matter of discretion may be a good ground for refusing to exercise the appellate jurisdiction.

Nanak Chand v. Sajjad Hussain (1), and *Tuljaram Row v. Alagappa Chettiar* (2), relied upon.

Appeal under Clause 10 of the Letters Patent against the order passed by Bhide J. in C. A. No. 746 of 1933, on the 9th May, 1933, refusing to stay execution.

(1) (1923) 71 I. C. 824.

(2) (1912) I. L. R. 35 Mad. 1.

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May 29.

BRIJ LAL, RAM SARAN and HARNAM SINGH, for
Appellants.

J. N. AGGARWAL, CARDEN-NOAD and RAM LAL
ANAND, for Respondents.

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SHADI LAL C. J.—The facts of this case lie within a narrow compass. On the 28th April, 1933, the Additional District Judge of Lahore, while holding that the two younger children, *Mussammat* Kulwanti and Kul Bhushan, should, in view of their tender age, be left with their mother *Mussammat* Prem Kaur, made an order, under the Guardians and Wards Act, that the eldest boy Kuldip “should be restored to the custody of his father where he will have a chance of getting properly educated.” Against this judgment *Mussammat* Prem Kaur preferred an appeal, which has been admitted to a Singh Bench, and she also made an application asking the Court to stay execution of the order regarding Kuldip pending the decision of the appeal. The application has been dismissed by Bhide J., and against his judgment *Mussammat* Prem Kaur has preferred this appeal under clause 10 of the Letters Patent.

It is unfortunate that the children should suffer on account of the disputes between the parties, but the various affidavits presented to this Court make it clear that there is no reasonable prospect of their composing their differences. This appeal must, however, fail on the short ground that the appellant has not succeeded in establishing a strong case, such as would justify our interference with the discretion of a Judge of this Court. It has been held by the Allahabad High Court that where an order is made in the exercise of his judicial discretion by a Single Judge, that order does not amount to a ‘judgment’ within the meaning of

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clause 10 of the Letters Patent, and that no appeal lies from it, *R. Wall v. J. E. Howard* (1). This Court, while not going so far as to hold that an order dealing with a matter of discretion is not appealable, has laid down that though an appeal is competent, the fact that the making of the order was a matter of discretion may be a good ground for refusing to exercise the appellate jurisdiction, *Nanak Chand v. Sajjad Hus-sain* (2).

The same principle has been adopted by the Madras High Court in *Tuljaram Row v. Alagappa Chettiar* (3).

Upon a careful consideration of all the circumstances I have reached the conclusion that no adequate ground for interfering with the discretion of the learned Judge has been established. I would accordingly dismiss the appeal with costs.

ABDUL QADIR J.

ABDUL QADIR J.—I agree.

A. N. C.

Appeal dismissed.

(1) (1895) I. L. R. 17 All. 438.

(2) (1923) 71 I. C. 824.

(3) (1912) I. L. R. 35 Mad. 1.