APPELLATE CIVIL.

Before Chief Justice Farran and Mr. Justice Parsons.

BA'LA'JI SAKHA'RA'M GURAV (ORIGINAL PETITIONER), APPLICANT, *v.* MERWA'NJI NOWROJI ANTIA (ORIGINAL OPPONENT No. 4), OPPONENT.*

1895. *November* 27.

Municipality—Election—Bombay District Municipal Act Amendment Act (II of 1884), Sec. 23†—Application to set aside a municipal election—Order made as to costs—Jurisdiction—High Court, power of, to review such order under Section 622 of the Civil Procedure Code (Act XIV of 1882)—High Court's Circular Order No. 62.‡

A District Judge acting under section 23 of the Bombay District Municipal Act Amendment Act (II of 1884) is not a Court within the meaning of the word in section 622 of the Civil Procedure Code (Act XIV of 1882), and the High Court has no jurisdiction to revise his order refusing to set aside an election, nor can it interfere with an order made by him that the applicant shall pay the costs incurred by the opponent.

The High Court's Circular Order (No. 62 at page 33 of the Order Book) refers to Courts.

APPLICATION under the extraordinary jurisdiction (section 622 of the Civil Procedure Code, Act XIV of 1882) against the order of F. C. O. Beaman, District Judge of Thána.

The applicant Báláji Sakhárám Gurav applied to the District Judge of Thána under section 23 of the District Municipal Act

* Application, No. 158 of 1895 under extraordinary jurisdiction.

† Section 23 of the Bombay District Municipal Act Amendment Act (II of 1884):—

23. If the validity of any election of a Municipal Commissioner is brought in question by any person qualified either to be elected or to vote at the election to which such question refers, such person may, at any time within ten days after the date of the declaration of the result of the election, apply to the District Judge of the district within which the election has been or should have been held.

The District Judge may, after such inquiry as he deems necessary, pass an order for confirming or amending the declared result of the election, or for setting the election aside.

For the purposes of the said inquiry the District Judge may exercise any of the powers of a Civil Court, and his decision shall be conclusive.

If he sets aside an election, a date shall forthwith be fixed, and the necessary steps taken for holding a fresh one.

‡ High Court's Circular Order No. 62:—

In any miscellaneous proceeding not being one involved in or necessary to the conduct of a suit or an appeal to decree, and in which the subject-matter does not admit of a precise valuation in money, the fee allowed shall, in a District Court or in a Court of Small Causes, be Rs. 10, subject by special order of the Court to diminution to a sum not less than Rs. 5 and to increase to a sum of not more than Rs. 30 for each such proceeding. In the Subordinate Courts, and Mámlatdár's Courts constituted under Bombay Act III of 1876, the fee shall ordinarily be Rs. 5 subject to increase by special order to a sum not exceeding Rs. 15.

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(Bombay Act II of 1884) to set aside the election of certain persons as municipal commissioners of Thána, alleging that the said elections were irregular and illegal. Notices of the application were issued to the commissioners, and after hearing them, the Judge rejected the application and directed the applicant to pay Rs. 200 to one of the commissioners as actual costs sustained by him in opposing the application and Rs. 320 as costs of the commissioner who was appointed to re-count the votes given at the said elections.

The applicant applied to the High Court under section 622 of the Civil Procedure Code (Act XIV of 1882), contending that the District Judge's order as to costs was made without jurisdiction. A rule *nisi* was issued to the opponent to show cause why the order should not be set aside.

Nárâyan G. Chandávarkar appeared for the applicant in support of the rule :—The District Municipal Act has made no provision for costs which are provided for by the High Court's Circular Order No. 62. Though this Court has no jurisdiction to entertain an application with respect to an order relating to municipal elections—*Jagannáth Ponápa* v. *Rev. M. F. De Souza*[1]—still we submit that the Court can entertain an application in connection with that part of the order which relates to costs. The District Judge had no jurisdiction to order payment of costs.

Chimanlál H. Setalvad appeared for the opponent to show cause:—This Court has no jurisdiction to entertain this application. The order as to costs forms part and parcel of the order relating to municipal elections. One part of the order is not separable from the other part. Section 23 of the District Municipal Act empowers the District Judge as an individual but not as a Court. Section 622 of the Civil Procedure Code contemplates a Court and not a particular individual. Therefore the present application cannot lie under section 622 of the Code.

The circular orders also are passed for the guidance of the lower Courts. If the District Judge is not a Court under section 23 of the District Municipal Act, then the circular orders do not apply to him. Even supposing that the order is illegal or

(1) P. J., 1894, p. 87.

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passed without jurisdiction, the applicant's remedy is to bring a suit to recover the costs. The question of hardship cannot be considered under section 622 of the Civil Procedure Code.

FARRAN, C. J.:—We are of opinion that a District Judge acting under section 23 of the Bombay District Municipal Act Amendment Act, 1884, is not a Court within the meaning of the word in section 622 of the Civil Procedure Code (Act XIV of 1882), and that this Court has no jurisdiction to revise his order refusing to set aside an election. (See *Jagannáth* v. *Rev. M. F. De Souza*[1].) For the same reason we cannot interfere with the order he has made that the applicant shall pay the actual costs incurred by the opponent. The circular order referred to (No. 62 at p. 33 of the Order Book) deals only with District Courts, Courts of Small Causes, Subordinate Courts, and Mámlatdárs' Courts. The District Judge in the present case is neither of these, and the order can have no application to him. He is merely a *persona designata*, and if he has jurisdiction at all to award costs, there is nothing to prevent him from awarding them on the scale he has adopted. On this point of jurisdiction we express no opinion, as his power to award costs has not been contested before us.

We discharge the rule with costs.

Rule discharged.

(1) P. J. for 1894, p. 87.

ORIGINAL CIVIL.

Before Sir C. Farran, Kt., Chief Justice, and Mr. Justice Strachey.

GORDHANDA'S JADOWJI, PLAINTIFF, *v.* HARIVALUBHDA'S BHA'IDA'S, DEFENDANT.*

1896. *July* 3.

Minor—Minority, period of, where guardian has once been appointed although no longer in existence—Indian Majority Act IX of 1875, *Sec.* 3—*Guardian and Wards Act VIII of* 1890, *Sec.* 52.

The defendant was sued upon a promissory note executed by him on the 24th August, 1892, he being at that time 19 years of age. Eight years previously, *viz.*

* Small Cause Court Reference, No. 20978 of 1895.