

*Before Sir Francis W. Maclean, K.C.I.E., Chief Justice, and
Mr. Justice Holmwood.*

1907
May 20.

JOGENDRA CHANDRA SEN
v.
WAZIDUNNISSA KHATUN.*

*Costs—Execution of decree—Application for execution of order as to costs—
Appeal to Privy Council—Jurisdiction—Inherent power of Court—Civil
Procedure Code (Act XIV of 1882) s. 583.*

The High Court made an order dismissing an application for leave to appeal to His Majesty in Council, with costs :—

Held, that although there is no section in the Code of Civil Procedure directly applicable to the case yet, by analogy to s. 583 of the Code, the proper Court to execute the order as to costs is the lower Court.

The Code of Civil Procedure is not exhaustive, and when a Court has made an order which it has jurisdiction to make, there is inherent power in the Court to have that order carried into effect.

APPEAL by the decree-holders, Jogendra Chandra Sen and others.

The respondent, Bibi Wazidunnissa Khatun, had preferred an appeal to the High Court from an order made by the Subordinate Judge of Jessore in certain execution proceedings against the present appellants. The appeal was dismissed by the High Court and costs were awarded to the present appellants. Bibi Wazidunnissa then applied for leave to appeal to His Majesty in Council and her application was dismissed with costs.

The present appellants applied before the Subordinate Judge for execution of the two aforesaid orders as to costs made by the High Court. The respondent, Bibi Wazidunnissa, objected to the execution on the ground, *inter alia*, that the Subordinate Judge had no jurisdiction to execute the order as to costs made on the application for leave to appeal to the Privy Council. The learned Subordinate Judge having allowed the objection, the decree-holders preferred this appeal to the High Court.

* Appeal from Order, No. 176 of 1905, against the order of Lal Behari Dey, Subordinate Judge of Jessore, dated January 1905.

Babu Nilmadhab Bose (Babu Shib Chandra Palit with him), for the appellants. Section 583 of the Code practically provides for a case like this. Section 217 of the Code empowers all Courts to make orders as to costs in any matter. But even if these sections be held not to be directly applicable, the Code, as has been repeatedly held, is not exhaustive; this Court undoubtedly had jurisdiction to make the order as to costs and quite apart from the provisions of the Code it has inherent jurisdiction to see that the order is carried into effect. It has been the uniform practice to send down these orders for execution to the lower Court.

Babu Jogesh Chandra Roy, for the respondent. Section 610 of the Civil Procedure Code empowers the High Court to transmit the order of the Privy Council to the lower Court for execution, and when it is transmitted the lower Court can execute it in the manner applicable to the execution of the original decree. That section has no application to the present case which is to realise costs awarded to the opposite party in an application for leave to appeal which is rejected. Under s. 612 of the Code the High Court may make rules regarding any matter connected with the enforcement of any order made under Chapter XLV. But as the High Court has made no rules there is no rule for levying execution of the order allowing costs to the appellant. Section 218 of the Code which empowers any Court to award costs on any application occurs in Part I which relates only to suits in general. But the costs awarded in the present case were awarded in an application made under Chapter XLV, which occurs in Part VI relating to appeals. In all the chapters under Part VI wherever any provisions in Part I are made applicable, they are made so by express provision, *e.g.*, s. 582 in Chapter XLI, s. 587 in Chapter XLII, s. 590 in Chapter XLIII, and s. 592 in Chapter XLIV. But there is no such section in Chapter XLV by which any of the provisions of Part I is made applicable. Section 583 of the Code has reference only to a decree passed in appeal under Chapter XLI of the Code. It has no reference to an application for leave to appeal under Chapter XLV. No doubt if the order can be executed at all by the lower Court, it can be done under inherent powers.

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MACLEAN C.J. The question which arises on this appeal is how, when a Division Bench of this Court has made an order dismissing an application for leave to appeal to His Majesty in Council with costs, the order as to costs is to be enforced. Until the present discussion there has been, I believe, no doubt that the usual and proper course is to transmit the order to the lower Court for execution. But it is now urged that the Court has no jurisdiction to do this, which means, in effect, that the Court has no power to enforce its own orders. I hope that is not so; and, I do not think that it is so. There is apparently no section in the Code of Civil Procedure which applies directly to the case. But the Code is not exhaustive, and it seems to me that when the Court had jurisdiction, as undoubtedly it had, to make the order as to costs, there is an inherent power in the Court to have that order carried into effect; otherwise the order would be a farce. I do not say that section 583 of the Code applies to the case, but I think that by analogy to that section, the practice which has prevailed for many years, of sending the order down for execution to the lower Court, can be supported. It is said that no rule has been made as might have been done under section 612 of the Code. Possibly that is because the practice had become and was so well established that the Court thought that no rule was necessary.

In my view there is an inherent power in the Court to make an order as to costs as it did in the present case, and that by analogy to section 583, the proper Court to execute the order is the lower Court—in the present case, the Subordinate Judge of Jessore.

The order of the Subordinate Judge, dated the 7th of January 1905, must, therefore, be discharged, and the matter must go back so that the order as to costs may be executed.

The appellant is entitled to costs of the appeal.

HOLMWOOD J. I agree.

Appeal allowed.

S. CH. B.