

B. Madho Prasad And Ors. vs Seth Tara Chand And Ors. on 8 August, 1952

Equivalent citations: AIR1952ALL912, AIR 1952 ALLAHABAD 912

JUDGMENT

Malik, C.J.

1. On 21st December 1951, their Lordships of the Supreme Court granted special leave to appeal to the applicants, leave to appeal having been refused by this Court. In the order granting special leave it was provided that the applicants should "within one month from the date of the signing this order furnish to the Registrar of the Allahabad High Court security in the sum of Rs. 4,000. (Rupees four thousand) for the costs of the respondents "

This order was signed on 9th January 1952. On 21st January 1952, an application was filed in this Court that this Court be pleased to allow the petitioner-appellants to furnish security in immovable properties for costs of the respondents and on 8th February 1952, a security bond duly executed and registered was filed in this Court. The opposite party filed a counter-affidavit that no sufficient cause had been made out for furnishing security other than in cash and it was further alleged that this Court had no jurisdiction to allow the applicants to furnish security in immovable property instead of in cash. The application came up before a Bench of this Court on 8th February 1952 and in view of the fact that the question was likely to arise in other cases and there was no previous decision on the point, the Bench considered it desirable to refer the question to a larger Bench. Care was, however, taken with the consent of counsel to frame the question in a general way so that it might be applied to other cases similar in nature. The question referred to this Bench is as follows :

"In a case in which special leave to appeal has been granted by the Supreme Court and not by this Court, has this Court power to order that security in property be furnished in place of cash security ?"

The Bench referring the point added a note that "It is assumed that the order of the Supreme Court granting special leave to appeal does not specify the nature of the security to be lodged by the petitioner-appellants'."

2. The question, therefore, whether there were sufficient reasons for allowing the applicants to furnish security in immovable property instead of in cash and the question whether there were any directions contained in the order of their Lordships of the Supreme Court about the form of security

are not before this Bench. We are only required to deal with the point, that where the Supreme Court has not specified the form of security can this Court acting under its powers under Order 45, Rule 7 (1) (a), proviso 1, Civil Procedure Code, allow a party to furnish security other than in cash ? The old practice prevailing when appeals lay to the Privy Council is not of much assistance as the Judicial Committee Rules relating to furnishing of security in cases where special leave was granted were different and security had to be furnished in such cases in England and not to the Registrar of the Court against whose decree or final order special leave to appeal had been granted.

The relevant rules of the Supreme Court are 6 and 8 of Order 13. Rule 6 provides that where the Court grants special leave to appeal, it may in its order specify: (1) the amount of the security for costs (if any) to be lodged by the petitioner, and (2) the time within which such security is to be lodged. It further provides that unless the Court specially directs otherwise, any security for costs to be furnished by the petitioner shall be lodged in the Court from, whose judgment or decision special leave to appeal has been granted. Rule 8 is in following terms:

"On receipt of the said order, the Court or tribunal appealed from shall, in the absence of any special directions in the order, act in accordance with the provisions contained in Order 45 of the Code, so far as applicable."

For purposes of our decision we shall assume that there are no special directions in the order of the Supreme Court about the form of security. It is conceded that if the form is specified by that Court or the time has been fixed by it, this Court, unless specially authorised by the order of the "Supreme Court, can neither vary the form of the security nor extend the period fixed for its furnishing. If, however, the form has not been specified and it is merely the amount of security that has been fixed, then the question arises whether this Court can direct that security shall be furnished otherwise than in cash. Order 13, Rule 8 of the Supreme Court Rules provides that in the absence of any special directions in the order so far as applicable, the provisions contained in Order 45, Civil P. C. would apply. The rules of the Supreme Court nowhere provide that security shall be furnished in cash. It is only Rule 7 (i) (a) of Order 45, Civil P. C. which lays down that security shall be in cash and then there is a proviso to the effect that "the Court at any time before expiry of the period for furnishing security may, after hearing any opposite party who appears, order on the ground of special hardship that some other form of security may be furnished." , We do not see why, when the whole of this order is applicable and when it is conceded that for purposes of our decision we must assume that there are no special directions in the order of the Supreme Court as regards the form of security, the proviso to Order 45, Rule 7 (i) (a), Civil P. C. should not apply.

3. Our answer to the question, therefore, is that the proviso to Order 45, Rule 7 (i) (a), Civil P. C. would apply to a case where special leave has been granted by the Supreme Court unless in the order granting leave their Lordships have specified the form of the security to be furnished by the applicant.

4. The answer may now be sent to the Bench concerned which would deal with the application.