

[IN REVISION.]

1936

Present: Abrahams C.J. and Dalton S.P.J.

AMEEN *v.* RASHEED.

D. C. Colombo, 3,684.

*Appeal—Order postponing action—Application for revision—Order is appealable.*

An order postponing an action is appealable.

**A**PPPLICATION for revision of an order of the District Judge of Colombo.

*A. E. Keuneman, K.C.* (with him *J. A. T. Perera*), for plaintiff, petitioner.

*N. Nadarajah* (with him *E. B. Wikramanayake*), for respondent.

*Cur. adv. vult.*

July 7, 1936. ABRAHAMS C.J.—

I am of the opinion that this preliminary objection should succeed. The learned District Judge made an order postponing the action until the decision of an appeal which he considered as having an important bearing on the action. The plaintiff thereupon applied to this Court, under section 75 of the Courts Ordinance, for revision of this order on the ground that it could not be justified in law. A preliminary objection has been taken to the effect that as the order made is appealable, this application should be rejected.

Is this an appealable order? There is no specific list of orders which are appealable, nor is the definition of "order" in the Civil Procedure Code at all helpful since the practice of these Courts, unlike that of the Courts in India, does not require the drawing up of any order. A number of cases have been cited to us in which different kinds of orders have been held appealable, and it would appear from them that any order made judicially is appealable. Moreover, in *Kathirasan Chetty v. Thevarayen and others*<sup>1</sup>, the Court (Hutchinson C.J. and Wendt J.) dismissed an appeal against an order refusing postponement and appeared thereby not to question that such an order was appealable.

<sup>1</sup> 1 *Leader L. R.* 87.

Counsel for the petitioner contends that an order for postponement is a ministerial and not a judicial order. I cannot agree that in allowing an application for the postponement of a trial a Judge cannot be said to act judicially. Once a case is fixed for trial the parties expect it to be heard on the day assigned, unless good reasons are advanced for its postponement. Postponement may result in embarrassing consequences for one or other of the parties—indeed in this instance the petitioner himself complains that he has been subjected to some financial prejudice—and it is obvious that when considering an application for postponement a Judge must bring his mind to bear upon the reasons for the application and the objections made thereto, and decide judicially.

It has been represented to us on the part of the petitioner that even if we find the order to be appealable, we still have a discretion to act in revision. It has been said in this Court often enough that revision of an appealable order is an exceptional proceeding, and in the petition no reason is given why this method of rectification has been sought rather than the ordinary method of appeal.

I can see no reason why the petitioner should expect us to exercise our revisional powers in his favour when he might have appealed, and I would allow the preliminary objection and dismiss the application with costs.

DALTON S.P.J.—I agree.

*Application refused.*

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