

1942

*Present : Howard C.J. and Soertsz J.*MUTTUKRISHNA *v.* HULUGALLE.

50—D. C. (Inty.) Colombo, Misc. No. 2.

Revision—Powers of Supreme Court—Order of the District Court—Refusal to order officers of a Company to submit for examination—Application by petitioner under Companies Ordinance—Courts Ordinance, s. 37.

It is not competent to the Supreme Court to revise an order made by the District Court in an application by the petitioner under section 133 of the Companies Ordinance, whereby the Court declined to inquire into the refusal of certain officers and agents of a Company to submit themselves for examination and to impose penalties on them for such refusal.

A PPEAL from an order of the District Judge of Colombo.

L. M. D. de Silva, K.C. (with him *C. V. Ranawake* and *Walter Jayawardene*), for the appellant.

H. V. Perera, K.C. (with him *N. M. de Silva*), for the first respondent.

E. B. Wickremanayake (with him *N. M. de Silva* and *H. Wanigetunga*), for the second respondent.

Cur. adv. vult.

March 23, 1942. HOWARD C.J.—

In this case, the applicant-petitioner asks the Court to review by way of revision an order of the Additional District Judge of Colombo made on March 25, 1941, whereby he refused an application by the petitioner under section 133 of the Companies Ordinance, 1938, for an inquiry into the refusal of certain officers and agents of Ceylon Exports, Limited, to submit themselves for examination and to impose penalties on them as provided thereunder. Mr. Perera has argued that the Court has no power to hear an application of this nature by way of revision. It is conceded by Mr. de Silva on behalf of the petitioner that the order of the

learned Judge is not subject to review by way of appeal. He contends, however, that the Court's powers of revision are wide enough to embrace review of the decision by this procedure. Those powers, so he maintains, are vested in the Court by virtue of sections 37 and 62 of the Courts Ordinance. He has also stressed the fact that the decision of the learned Judge was with regard to a matter of such importance that it was in the public interest that its correctness should be reviewed by this Court. Mr. Perera, on the other hand, maintains that no injustice or prejudice has been occasioned by the decision nor can the substantial rights of any person be affected by any decision of this Court. Hence any decision would be purely academic. He has invited our attention to the final paragraph of section 36 of the Courts Ordinance, which is as follows:—

“But no judgment, sentence or order pronounced by any Court shall on appeal or revision be reversed, altered or amended on account of any error, defect or irregularity which shall not have prejudiced the substantial rights of either party.”

As the rights of neither party have been prejudiced, Mr. Perera maintains that this Court has no power to alter the order of the learned Judge. After due consideration, I have come to the conclusion that Mr. Perera's contention is correct. It cannot be said that the substantial rights of either party to the proceedings before the learned Judge have been prejudiced by his decision. Hence it is not competent for this Court under the provisions of section 37 of the Courts Ordinance to hear this case in revision.

There remains for consideration the question as to whether an order made by a District Judge under section 133 of the Companies Ordinance, 1938, can be the subject of an application to this Court by way of revision. In *The King v. Noordeen*¹, it was stated by Wood-Renton J. as follows:—

“Under section 357 (1) of the Criminal Procedure Code, the Supreme Court is empowered, in any case, the record of the proceedings of which has been called for by itself or which otherwise comes to its knowledge, to exercise its revisionary powers at its discretion. It appears to me that the language of that section invests the Supreme Court with full powers of revision in all criminal cases.”

Hence, the Supreme Court is empowered to act in revision in all criminal cases, whether or not an appeal lies. Does the same principle apply with regard to civil cases? In *Atukorale v. Samynathan*², Soertsz J. stated as follows:—

“The power of revision conferred on the Supreme Court of Ceylon, by sections 29 and 37 of the Courts Ordinance and by section 753 of the Civil Procedure Code are very wide indeed and clearly this Court has the right to revise any order made by an original Court, whether an appeal has been taken against that order or not.”

Is this passage an authority for the proposition that the Supreme Court has the power to interfere by way of revision with a decision of an original Court, irrespective of the appealability of such decision? At first glance,

¹ 13 N. L. R. 115.

² 14 C. L. W. 109.

a contrary view seems to have been taken in *Jayasinghe v. Alwis*¹, where the petitioner moved the Court in revision to vacate an order made by a District Judge, granting an application for consent to marry the petitioner's minor daughter. It was held that in the circumstances the remedy by way of revision does not lie. This case was apparently decided on the authority of *Fernando v. Fernando*², where it was held that a consent given by a District Judge to the marriage of a minor under section 23 (2) of the Marriage Ordinance, 1907, is not a "judgment, decree or order", within the meaning of section 75 of the Courts Ordinance, 1889, and no appeal lies from such a consent. Section 39 of the Courts Ordinance gives jurisdiction to the Supreme Court in the matter of appeal, while section 75 provides in what cases parties may come to the Supreme Court by way of appeal. Sections 40 and 73 of the present Courts Ordinance correspond with sections 39 and 75 of the Courts Ordinance, 1889. *Fernando v. Fernando* (*supra*) is, therefore, an authority for the proposition that an appeal from a consent order under the Marriage Ordinance does not lie. The Court in *Jayasinghe v. Alwis* (*supra*) have for similar reasons held that proceedings by way of revision will not lie. This latter decision is, therefore, based on the ground that a consent order under the Marriage Ordinance is not an "order" within the meaning of that term in section 753 of the Civil Procedure Code. Hence, proceedings in revision will not lie. In these circumstances, the decision can be reconciled with the dictum I have cited of Soertsz J., in *Atukorale v. Samynathan* (*supra*), and the judgment of Wood-Renton J., in *The King v. Noordeen* (*supra*). However, in view of the opinion at which I have already arrived, it is not necessary to decide the question as to whether the refusal of the Court to punish a person under section 133 (5) of the Companies Ordinance, 1938, is an "order" within the meaning of that term in section 753 of the Civil Procedure Code.

For the reasons I have given, the application is dismissed with costs.

SOERTSZ J.—I agree.

Application refused.

