

**In Re: Kondalu Aiyar**

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**Court :** Chennai

**Decided On :** Oct-23-1929

**Reported in :** AIR1930Mad427; (1929)57MLJ783

**Appellant :** In Re: Kondalu Aiyar

**Judgement :**

1. This is a Letters Patent Appeal from the judgment of Mr. Justice Jackson and the question is, does the appeal lie? There was a Second Appeal filed, and in that an application was made for stay of execution of the decree of the Lower Appellate Court. The application was dismissed by Mr. Justice Jackson and this is an appeal from his order.

2. It is on account of the recent amendment of the Letters Patent that the present question arises. There was no certificate granted by the learned Judge declaring that the case is a fit one for appeal. Mr. Venkatasubramania Aiyar's contention is this. The order in question is not a judgment passed by the High Court in the exercise of its appellate jurisdiction. The very expression 'Appellate Jurisdiction,' he contends, involves a scrutiny of a proceeding of an inferior Court. The order of the High Court refusing stay is not related to any order of the Lower Court and has an independent existence. Moreover,, power to grant or refuse stay is conferred on the High Court by an express provision in the Civil Procedure Code. On these grounds, he maintains, that the order in question was not made by a judge of the High Court in the exercise of his appellate jurisdiction. This contention involves a fallacy. A similar argument was advanced in *Sadaka Muhammad v. Hayath Batcha*

Sahib (1927) 54 M.L.J. 323 with reference to an interlocutory order in a Civil Revision Petition. Kumaraswami Sastri and Wallace, JJ., made the following observation:

It is difficult to see how there can be any application apart from the Civil Revision Petition filed in the High Court as a party could not, without filing a Civil Revision Petition in the High Court, ask for stay of execution of the decree in the Lower Court.

3. These remarks apply to the present case. The application to the learned Judge could not have been made independent of, and apart from, the second appeal that was pending. We must, therefore, hold that it was the appellate jurisdiction of the High Court that was invoked and that the order was made in exercise of that jurisdiction. Sri Sri Sri Chandra Chudamani Raja Harischandra Jagdev v. Lokkeno Patnaik, S.R. No. 12731 of 1928 (decided by Ramesam and Thiruvengkatachariar, JJ.) is a direct case on the point and supports our view. The appeal is dismissed.

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