

**In Re: Veeraswami Padayachi**

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**SooperKanoon Citation :** [sooperkanoon.com/781924](http://sooperkanoon.com/781924)

**Court :** Chennai

**Decided On :** Dec-06-1937

**Reported in :** AIR1938Mad399; (1938)1MLJ402

**Appellant :** In Re: Veeraswami Padayachi

**Judgement :**

ORDER

**Venkatasubba Rao, J.**

1. The point raised is a novel one. Pandrang Row, J., decided a second appeal against the petitioner, who thereupon applied for a review of the learned Judge's judgment. Review was refused and the present appeal, is from the order of refusal. The learned Judge was not asked to certify under Clause 15 of the Letters Patent that the case was a fit one for appeal, and the question is, whether the present appeal without leave is competent.

2. The argument turns on the following words within brackets in Clause 15:

Not being a judgment passed in the exercise of appellate jurisdiction in respect of a decree or order made in the exercise of appellate jurisdiction by a Court subject to the superintendence of the said High Court.

3. The contention is put thus: what these words contemplate is a judgment in respect of an appellate decree or order made by a Subordinate Court; Pandrang

Row J.'s judgment refusing to review (for the present purpose his order may be assumed to be a judgment) is not in respect of such decree or order; for, what the learned Judge refused to review was his own order. From this it follows, it is contended, that the order in question is not covered by the express wording of the exception. The argument, though plausible, is without substance. The clause, properly construed, means that no judgment of a Judge of the High Court in the exercise of second appellate jurisdiction is appealable without leave. Here, the order refusing to grant review was made in the exercise of such second appellate jurisdiction; that is, the short answer to the objection.

4. To test the matter, let us suppose that instead of refusing a review, the learned Judge made an order granting it. Mr. Ramakrishna Aiyar, to be logical, has had to contend that from such an order an appeal will lie; but when after granting the review, the Judge proceeds to dispose of the second appeal, no appeal will without leave lie from the final decision--which of course is the undoubted effect of the clause. The position that results is most anomalous.

5. Apart from that, the absurdity of the contention is apparent. All that a defeated party in a second appeal need do is, to apply for a review and, on his request being refused, to come to the appellate Court and contend that an appeal lies from the refusal as a matter of right. No Court can accept a construction which involves such a startling result.

6. We hold that the Letters Patent Appeal is incompetent and accordingly reject it.

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