

distinguishable on the grounds stated in the case of *Jeewandas Dhanji v. Ranchoddas Chaturbhuj*.⁽¹⁾ It is not for the foreign Court to consider whether the execution in British India would be time-barred; and the order for transmission by the foreign Court cannot be treated as an order for execution.

Rule made absolute.

R. R.

APPELLATE CIVIL.

Before Mr. Justice Batchelor and Mr. Justice Shah.

THE MUNICIPALITY OF BELGAUM (ORIGINAL PLAINTIFF), APPLICANT v. RUDRAPPA SUBRAO SUTAR AND OTHERS (ORIGINAL DEFENDANTS), OPONENTS.*

1916.
NABIBHAI
VAZIRBHAI
v.
DAYABHAI
AMULAKH.

1916.
February 29.

Civil Procedure Code (Act V of 1908), section 115—High Court—Revisional jurisdiction—Decision of District Court—Bombay District Municipalities Act (Bombay Act III of 1901), section 160.†

No application can be made under the revisional jurisdiction of the High Court from the decision of a District Court under clause 3 of section 160 of the Bombay District Municipalities Act (Bombay Act III of 1901).

(1) (1910) 35 Bom. 103.

* Civil Extraordinary Application No. 294 of 1915.

† Section 160 of the Bombay District Municipalities Act (Bom. Act III of 1901), runs as follows:—

160. (1) If a dispute arises with respect to any compensation, damages, costs or expenses which are by this Act directed to be paid, the amount, and if necessary, the apportionment of the same, shall be ascertained and determined by a Panchayat of five persons, of whom two shall be appointed by the Municipality, two by the party (to or from whom such compensation, damages, costs or expenses may be payable or recoverable) and one, who shall be sir-panch, shall be selected by the members already appointed as above.

(2) If either party, or both parties fail to appoint members, or if the members fail to select a sir-panch within one month from the date of either party receiving written notice from the other of claim to such compensation, damages, costs or expenses, such members as may be necessary to constitute the Panchayat shall be appointed, at the instance of either party, by the District Judge.

1916.

MUNICI-
PALITY
OF
BELGAUM
v.
RUDRAPPA.

THIS was an application under section 115 of the Civil Procedure Code from the decision of N. J. Wadia, Assistant Judge at Belgaum.

The Municipality of Belgaum having had to acquire a piece of land in the city of Belgaum, disputes arose between the Municipality and the owner (defendant No. 1) as to the amount of compensation for the land, which were referred by the parties to a Panch under the provisions of clause 1 of section 160 of the Bombay District Municipalities Act (Bombay Act III of 1901). On the failure of the Panch to deliver their award within one month, the Municipality applied to the District Court under clause 3 of the section to determine the amount of the compensation.

During the inquiry before the Assistant Judge it appeared that the house upon the land belonged to defendant No. 1, while the land itself belonged to defendants Nos. 2 and 3. The learned Judge held upon a preliminary issue that he had no jurisdiction to proceed with the suit without the claims of defendants Nos. 2 and 3 having been first submitted to arbitration under clauses 1 and 2 of section 160. He, therefore, dismissed the suit.

(3) In the event of the Panchayat not giving a decision within one month from the date of the selection of the sir-panch, or of the appointment by the District Court of such members as may be necessary to constitute the Panchayat, the matter shall, on application by either party, be determined by the District Court which shall, in cases in which the compensation is claimed in respect of land, follow as far as may be the procedure provided by the Land Acquisition Act, 1894, for proceedings in matters referred for the determination of the Court :

Provided that—

- (a) no application to the Collector for a reference shall be necessary, and
- (b) the Court shall have full power to give and apportion the costs of all proceedings in any manner it thinks fit.

The Municipality applied to the High Court.

At the hearing a preliminary objection was raised, that the application did not lie.

T. R. Desai, for respondent No. 1, in support of the preliminary objection :—The present proceedings were taken under section 160 of the Bombay District Municipalities Act, 1901. That section vests jurisdiction only in a District Judge, which is a personal jurisdiction. It has been held that a District Judge acting under the District Municipalities Act is not a Court for the purpose of section 22 and the High Court declined to interfere in revision against his order : *Balaji Sakharan v. Merwanji Nowroji*.⁽¹⁾ It is also held that no appeal lies against an order passed by a District Judge under section 160 of the Act : *Chunilal Virchand v. Ahmedabad Municipality*.⁽²⁾ If no appeal can lie, a revisional application cannot also lie. The scheme of the Act is to make the District Judge's decision final.

A. G. Desai for the applicant :—Merely because an order is not appealable it cannot be said that a revisional application does not lie. There are many cases under the Civil Procedure Code, where there is no appeal yet a remedy by a revisional application is contemplated. The case of *Balaji Sakharan v. Merwanji Nawroji*⁽¹⁾ is distinguishable, for the term used in section 22 is "District Judge," whereas section 160 speaks of "District Court."

K. H. Kelkar for opponent No. 2.

BACHELOR, J. :—In the case of *Chunilal Virchand v. Ahmedabad Municipality*⁽²⁾ it has been decided by a Bench of this Court that no appeal lies from the decision of a District Court under clause (3) of section 160

⁽¹⁾ (1895) 21 Bom. 279.

⁽²⁾ (1911) 36 Bom. 47.

1916.

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of the Bombay District Municipalities Act. The object of this application is to obtain from the Court a decision that although no appeal would lie, yet an application in revision does lie. Such a decision would, in our opinion, be seriously anomalous, and we do not think that the words of the Statute require us to make such a pronouncement. The only decision which seems to us fairly consistent with that already recorded in *Chunilal Virchand's case*,⁽¹⁾ is the decision that no application for revision is competent. In *Balaji Sakharam v. Merwanji Nowroji* ⁽²⁾ this Court has held that it has no jurisdiction to revise the order of a District Judge acting under section 23 of the Bombay District Municipalities Act of 1884. And although the words occurring in that section are 'District Judge,' whereas the words occurring in section 160, last clause, are 'District Court,' we do not think that the distinction is sufficient to support the argument that an application for revision is competent, although admittedly no appeal would lie.

The rule, therefore, must, in our opinion, be discharged with costs.

There will be one set of costs.

We notice that the order in this case was made not by the District Judge but by the Assistant Judge. As, however, no point has been taken on this circumstance, it is unnecessary for us to decide—and, therefore, we do not decide—whether the District Judge was competent under section 16 of the Civil Courts' Act or otherwise to transfer to the Assistant Judge this particular case.

Rule discharged.

R. R.

⁽¹⁾ (1911) 36 Bom. 47.

⁽²⁾ (1895) 21 Bom. 279.