
(1948) 04 MAD CK 0004
In the Madras High Court

A.B.M.S. Mohamed Ali Maracoir and Others APPELLANT
Vs
P.S.N.S. Ambalavana Chettiar RESPONDENT

Date of Decision : 07-04-1948

Acts Referred:

Citation : (1949) ILR (Mad) 319 : (1948) 61 LW 531 : (1948) 2 MLJ 191

Hon'ble Judges : P.V. Rajamannar, O.C.J.

Bench : Division Bench

Judgement

P.V. Rajamannar, Officiating C.J.

1. A preliminary objection is taken by Mr. G. Ramakrishna Aiyar on behalf of the respondent to the maintainability of this Letters Patent Appeal.

In an appeal against a decree of the learned City Civil Judge in O.S. No. 478 of 1944, which was for recovery of damages for breach of contract

Chandrasekhara Aiyar, J., directed the trial Court to take fresh evidence that may be adduced by the parties on issue 7 in the case as regards the

difference in the price of the goods on the date of receipt and the date of delivery and send up its findings on the evidence so recorded.

2. It was contended by Mr. Ahmed Meeran for the appellants that the appeal is competent because the learned Judge had decided that the plaintiff

would be entitled to damages for breach of warranty and has only called for a finding to enable him to pass a decree and that that part of the

learned Judge's order which decided his liability was a judgment within clause 15 of the Letters Patent and an appeal was therefore competent. He

even went to the length of contending that if he did not come up in appeal against the order at this stage he would be precluded hereafter from

challenging the correctness of the learned Judge's finding on liability.

3. He relied upon the observations in *Tuljaram Row v. Alagappa Chettiar* (1910) 21 M.L.J. 1 : ILR 35 Mad. 1 the leading judgment of a Full

Bench of this Court on the meaning of "judgment" in clause 15 of the Letters Patent. At page 14, Krishnaswami Aiyar, J., said:

But I do not think we shall be justified in confining the term "judgment" to final disposal of suits, appeals or original petitions or proceedings in execution. Preliminary or interlocutory judgments which ascertain rights and direct further inquiries which determine liabilities though further directions are given for ascertaining the measure of those liabilities must be deemed to fall within clause 15.

These observations which are general in nature have, in our opinion, reference only to cases where there are decrees of the nature of preliminary

decrees for accounts in a suit for dissolution of partnership or in a suit for partition or a preliminary decree for sale in a mortgage suit. The

observations of White, C.J., at page 7 also relied upon by the learned advocate for the appellants bring out the implication of the rule laid down by

the learned Judges in that case:

The test seems to me to be not what is the form of the adjudication but what is its effect in the suit or proceeding in which it is made. If its effect,

whatever its form may be, and whatever may be the nature of the application on which it is made, is to put an end to the suit or proceeding so far

as the Court before which the suit or proceeding is pending is concerned, or if its effect, if it is not complied with, is to put an end to the suit or

proceeding, I think the adjudication is a judgment within the meaning of the clause. An adjudication on an application which is nothing more than a

step towards obtaining a final adjudication in the suit is not, in my opinion, a judgment within the meaning of the Letters Patent.

Applying this test, we have no hesitation in holding that the order of Chandrasekhara Aiyar, J., calling for a finding on issue 7 is not a judgment

within the meaning of clause 15 of the Letters Patent.

Two decisions of the Judicial Committee in (1890) L.R. 18 I.A. 6 (Privy Council) and *Saiyid Muzhar Hossein v. Mussamat Bodha Bibi* (1894) 5

M.L.J. 20 : 1894 L.R. 22 LA. 1 : ILR 17 All. 112 were relied upon by the learned advocate for the appellant. They deal with the construction of

the word "final" which occurred in Section 595 of the CPC then in force. In

both the cases, the High Court had refused leave to appeal to Her Majesty in Council on the ground that a decree made by the High Court was not final within the meaning of that word in Section 595 of the CPC and therefore a certificate should be refused u/s 601 of the Code. Their Lordships granted special leave. Neither case has any application to the facts of the present case. They were not cases in which an appeal was kept pending and a finding had been called for on any particular issue, old or new. The decision in Kannayalal Bhoya Vs. Balaram Paramasukdoss, was also relied upon. The facts there were as follows : In a suit under Order VI-A of the Original Side Rules the defendant was directed to find security for the amount claimed. The result of not complying with that order was that the defendant would not be permitted to defend and a decree would follow, according to the terms of Order VI-A of the Original Side Rules. The defendant made a deposit. Then on the application of the defendant certain issues were set down for trial, one of them being whether the suit document was a negotiable instrument. That issue was tried as a preliminary issue and a decision was given thereon, the learned Judge holding that it was not a negotiable instrument. He thereupon ordered the security deposited to be repaid to the defendant and directed that the action should proceed as an ordinary suit. Against that order an appeal was held to be competent. The decision in that case cannot be of much assistance to the appellants in the present case, because in that case there was a final order directing the security to be repaid and that was certainly a final adjudication on the particular point which, in one sense, did not have reference to the other issues in the case. If that decision, however, was meant to lay down that the finding of the learned trial Judge on one of several issues in the case which did not put an end to the suit was a judgment subject to appeal under clause 15 of the Letters Patent, we respectfully express our dissent therefrom, as was done by a Division Bench of this Court, in Punneya v. Parandamayya (1926) 25 L.W. 95. In our opinion, the present case is covered by the decision in the last mentioned case in Punneya v. Parandamayya (1926) 25 L.W. 95 where Devadoss and Sundaram Chetty, JJ., ruled that an order passed by a single Judge of the High Court calling for a finding from the lower Court on an issue, whether newly framed or not, was not a judgment under

clause 15 of the Letters Patent and no appeal therefore lay. With respect, we follow this decision. The learned advocate for the appellants tried to distinguish this decision, but not successfully.

4. No authority was cited for the appellants to support the contention that if an order like the present is not challenged at once by way of Letters

Patent appeal, the party aggrieved would be for ever precluded from challenging its correctness. Indeed, we did not expect any decision to have

held that way. We consider that the appellants in this case, if they happen to be aggrieved by the final judgment of the learned Judge, disposing of

the City Civil Court Appeal, can certainly challenge the correctness of the several findings contained in the judgment of the learned Judge now

under appeal.

5. We uphold the preliminary objection and dismiss the appeal with costs.