

**(1996) 04 MP CK 0050**  
**In the Madhya Pradesh High Court**  
**Case No : M.A. No. 380 of 1996**

Anil Kunj Bihari Saraf

APPELLANT

Vs

Namboodas and Others

RESPONDENT

**Date of Decision :** 18-04-1996

**Acts Referred:**

Motor Vehicles Act, 1988 — Section 173(1)

**Citation :** (1997) 1 MPLJ 522

**Hon'ble Judges :** D.P.S. Chouhan, J

**Bench :** Single Bench

**Advocate :** Ashok Lalwani, for the Appellant; No Appearance, for the Respondent

## **Judgement**

D.P.S. Chouhan, J.

Learned counsel for the appellant Shri Ashok Lalwani submitted that in this case the appellant has not made the deposit as required under the first proviso to section 173(1) of the Motor Vehicles Act, 1988; and he has addressed the Court that in the first proviso (aforesaid) the word "entertain" is used which signifies "not at the admission stage" but signifies the stage of final hearing.

Thereafter he modified the submission that he means to submit that the condition of entertainment of the appeal regarding the deposit of the amount is mandatory provision is between the stage of admission and final hearing; and as such, since the case is posted in motion hearing, he is not required, under the law, to make the deposit. The stage of depositing the amount as mentioned in the proviso, would come after the appeal is admitted in the motion hearing.

The learned counsel for the appellant has relied on, on the provisions of Order 21, Rule 90, Civil Procedure Code. Clause (b) as per amendment made by Allahabad High Court, which is as extracted below :-

"(b) Unless the applicant deposits such amount not exceeding twelve and half per cent of the sum realised by the sale or furnishes such security as the Court

may, in its discretion, fix except when the Court, for reasons to be recorded, dispenses with the requirement of this clause."

In this context, the learned counsel for the appellant placed reliance on the case of the Supreme Court in *Hindusthan Commercial Bank Ltd. Vs. Punnu Sahu (Dead)* through Legal representatives, . The said proviso was the subject-matter of consideration before the Supreme Court which used the word "entertain". In the said case, for certain properties belonging to judgment-debtor (the appellant in that case) executing Court was moved under Order 21, Rule 90, CPC to set aside the sale. His application was dismissed on the ground that he was not an interested party. Aggrieved by that order, he went in appeal in the High Court of Allahabad. The High Court reversed the findings of the lower Court that the appellant was not an interested party but at the same time, dismissed the appeal on the ground that as the appellant had not complied with the requirement of Rule 90 of Order XXI, CPC as amended by the Allahabad High Court, his application was not maintainable. Clause (b) of the Proviso was added on 1st June, 1957. The application with which the Court was concerned, was made on 2nd June, 1957. The applicant did not pay the security as provided under the newly amended clause nor did the Court call upon to do so. Before the executing Court, all the parties proceeded on the basis that the application was regularly made. The objection as to the maintainability of the application appear to be taken for the first time in the High Court.

Before the High Court, it was contended on behalf of the judgment-debtor and that contention was repeated before the Supreme Court, that clause (b) of the Proviso did not govern the present proceedings as the application in question had been filed several months before that clause was added to the proviso. The contention of the appellant was that the expression "entertain" found in the Proviso, refers to the initiation of the proceedings and not to the stage when the Court take up the application for consideration. This contention was rejected by the High Court relying on the decision of that Court in *Kundan Lal Vs. Jagan Nath Sharma*, . The same view had been taken by the Allahabad High Court in *Dhoom Chand Jain v. Chamanlal Gupta*, AIR 1962 All. 453, *Haji Rahim Bux and Sons v. Firm Samuallah and Sons*, AIR 1963 SC 320 and *Mahavir Singh and Another Vs. Gauri Shankar and Others*, . These decisions have interpreted the expression "entertain" as meaning "adjudicate upon" or "proceed to consider on merits". This view of the High Court has been accepted as correct by the Supreme Court in *Lakshmi Rattan Engineering Works Ltd. Vs. Asstt. Commr. Sales Tax, Kanpur and Another*, .

The Court, in the said case, viz. *Laxmiratan Engineering Works Limited vs. Assistant Commissioner, Sales Tax, Kanpur* (supra) considered the meaning of the word "entertain" as used in the proviso to section 9 of the U. P. Sales Tax Act (Act No. 15 of 1948) which is to the effect :

"Provided that no appeal against as assessment shall be entertained unless it is accompanied by satisfactory proof of the payment of the amount of tax admitted

by the appellant to be due, or of such instalments thereof as may have become payable."

In para 7 of the said report, the question that cropped up before the Supreme Court was "What is the meaning of the word "entertain" in this context? Does it mean that no appeal shall be received or filed or does it mean that no appeal shall be admitted or heard and disposed of unless satisfactory proof is available? The Court considered the dictionary meaning of the word "entertain" which was to the effect "to deal with or admit to consideration". Regarding the word "entertain" the Court stated that "we are also of the same opinion". Then the Court considered the question as to at what stage can the appeal be said to be entertained for the purpose of the application of the proviso? Is it "entertained" when it is filed or is it "entertained" when it is admitted and the date is fixed for hearing or is it finally "entertained" when it is heard and disposed of?

The Court observed that "numerous cases exist in law reports in which the word "entertain" or similar cognate expressions have been interpreted by the Courts. Some of them from the Allahabad High Court itself have been brought to our notice and we shall deal with them in due course. For the present, we must say that if the legislature intended that the word "file" or received was to be used, there was no difficulty in using those words. In some of the statutes which were brought to our notice such expressions have in fact been used. For example, under Order 41, Rule 1 of the CPC it is stated that a memorandum shall not be filed or presented unless it is accompanied etc. in section 17 of the Small Cause Courts Act, the expression is "at the time of presenting the application". In Section 6 of the Court Fees Act, the Words are "file" or "shall be received". It would appear from this that the legislature was not at a loss for words if it had wanted to express itself in such forceful manner as is now suggested by counsel for the State. It has used the word "entertain" and it must be accepted that it has used it advisedly. This word has come in for examination in some of the cases of the Allahabad High Court and we shall now refer to them".

The Court considered the case of Dhoom Chand Jain vs. Chamanlal Gupta (supra) in which the Court held that the word "entertain" in its application bears the meaning "admitting to consideration" and therefore when the Court cannot refuse to take an application which is backed by deposit or security, it cannot refuse judicially to consider it. In Haji Rahim Bux and Sons vs. Finn Samuallah and Sons (supra), a Division Bench of that Court interpreted the word "entertain" under Order XXI, Rule 90 by saying that the word "entertain" meant not "receive" or "accept" but "proceed to consider on merits" or "adjudicate upon".

In para 10, the Supreme Court said :

"It would therefore appear that the direction to the Court in the Proviso to section 9 is that the Court shall not proceed to admit to consideration an appeal which is not accompanied by satisfactory proof of the payment of the admitted tax. This will be when the case is taken up by the Court for the first time. In the

decision on which the Assistant Commissioner relied, the learned Chief Justice (Desai, C.J.) holds that the words "accompanied" showed that something tangible had to accompany memorandum of appeal. If the memorandum of appeal had to be accompanied by satisfactory proof, it to be in the shape of something tangible, because no intangible thing can accompany a document like the memorandum of appeal."

The Supreme Court took a view by saying that :

"In our opinion, making "an appeal" the equivalent of the memorandum of appeal is not sound. Even under Order 41 of the Code of Civil Procedure, the expressions "appeal", and "memorandum of appeal" are used to denote two distinct things. In Wharton's Law Lexicon, the word "appeal" is defined as the judicial examination of the decision by a higher Court of the decision of inferior Court. The appeal is the judicial examination; the memorandum of appeal contains the grounds on which the judicial examination is invited. For purposes of limitation and for purposes of the rules of the Court it is required that a written memorandum of appeal shall be filed. When the proviso speak of the entertainment of the appeal, it means that the appeal such as was filed will not be admitted to consideration unless there is satisfactory proof available of the making of the deposit of admitted tax."

The first proviso to section 173(1) is as extracted below :-

"Provided that no appeal by the person who is required to pay any amount in terms of such award shall be entertained by the High Court unless he has deposited with it twenty-five thousand rupees or fifty per cent of the amount so awarded, whichever is less, in the manner directed by the High Court."

It may further be noted that the Legislature used the word "entertain" advisedly in its wisdom.

Provision of section 18(1), CPC also requires to be taken notice of which has used the word "entertain" and "dispose of".

The word "entertain" has been defined in the Legal Glossary published by the Government of India, 1992 Edition, as to "admit in order to deal with and the Hindi translation is "Grahan Karna" There is a difference between the words "entertain" and "hear". The word "entertain" means "to admit for hearing" and "hear" means to hear for decision and Hindi equivalent of these two words are "Grahan Karna" and "Sunana".

In view of the above, the condition precedent for entertainment of the appeal i.e. for admission of the appeal for hearing is the deposit of the amount as provided by the First Proviso to section 173(1) of the Motor Vehicles Act, 1988.

The submission advanced by the learned counsel for the appellant is sans substance and is rejected.

After the order was dictated, learned counsel for the appellant made an oral

prayer that before hearing the matter for admission, he may be given an opportunity for making the compliance of the requirement of the first proviso to section 173(1) of the Motor Vehicles Act, 1988.

As prayed, he may make the deposit within a period of three weeks.