
(2004) 09 MP CK 0036
In the Madhya Pradesh High Court
Case No : L.P.A. No. 172 of 2004

Asha Ram

APPELLANT

Vs

State of M.P.

RESPONDENT

Date of Decision : 09-09-2004

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 7 Rule 11, Order 7 Rule 11(a)

Citation : AIR 2005 MP 58 : (2004) 4 MPLJ 445

Hon'ble Judges : S.S. Jha, J; Chandresh Bhushan, J

Bench : Division Bench

Advocate : M.N.K. Mody and D.P.S. Bhadoria, for the Appellant; Brijesh Sharma, P.D. Bidua and Raghavendra Dixit, for the Respondent

Final Decision : Dismissed

Judgement

Preliminary objection is raised on the maintainability of this appeal by the respondents. It is contended by the respondents that the order passed by the single Bench is not a judgment within the meaning of Clause 10 of the Letters Patent. In support of their contention, reliance has been placed on the judgments of Apex Court in the case of Shah Babulal Khimji Vs. Jayaben D. Kania and Another, , Asrumati Debi Vs. Kumar Rupendra Deb Raikot and Others, , Mithailal Dalsangar Singh and Others Vs. Annabai Devram Kini and Others, and Satish Trading Company v. Divisional Manager, P. P. Khare, Indore Telephones 1999 (1) Jab LJ 217. Reliance has also been made on the unreported judgments of this Court in the case of M/s. Shree Om Agroil Private Limited v. M. P. Electricity Board decided in L.P.A. 222/2000 on 7-5-2004 and in the matter of M/s. Gwalior Synthetics Private Limited v. M. P. Electricity Board decided in LPA 281/1996 on 11-5-1996. Counsel for appellant placed reliance upon the judgments of the Apex Court in the case of Employer in Relation to Managment of Central Mine Planning and Design Institute Ltd. Vs. Union of India and Another, and judgment in the case of Liverpool and London S.P. and I. Association Ltd. v. M. V. Sea Success 1 reported in 2004 (1) Sup 365.

Counsel for respondents submitted that the orders passed by Single Bench is not a judgment in the meaning of Clause 10 as right of the parties have not been adjudicated by the Single Bench and they have submitted that this appeal is not maintainable.

Counsel for appellant submitted that dispute has been raised before the Single Bench and that dispute has not been decided by the Single Bench and petition has been dismissed on the ground that petitioner should approach the Civil Court as disputed questions of facts arose in the case. Counsel for appellant submitted that there were no disputed question of facts before the Single Bench which cannot be adjudicated in the writ jurisdiction. He submitted that since there was no dispute, petition cannot be thrown out and the action of Court in refusing to decide the dispute is also a judgment and in support of his contention he has placed strong reliance in the judgment of Liverpool and London (supra) and Central Mine Planning and Design (supra). Para 14 of Central Mine Planning and Design Institute Limited (AIR 2001 SC 888) (supra) is as under :--

"In the instant case, we are concerned with the last mentioned category. From the above discussion, it follows that to determine the question whether an interlocutory order passed by one Judge of a High Court falls within the meaning of "judgment" for purposes of Letters Patent the test is : Whether the order is a final determination affecting vital and valuable rights and obligations of the parties concerned. This has to be ascertained on the facts of each case."

The test determined by the Apex Court is that whether the order is a final determination affecting vital and valuable rights and obligations of the parties concerned. This has to be ascertained on the facts of each case. Similarly in the case of Liverpool and London (supra) the question arose for determination was whether the order refusing to reject the plaint is a judgment within the meaning of Clause 15 of Letters Patent. While deciding the question, the Apex Court has held that the order refusing to reject the plaint will be an order because the litigant cannot be forced to litigate unnecessarily if plaintiff has no cause of action or suit is otherwise not maintainable under the provisions of Order 7, Rule 11 of the Code of Civil Procedure. In para 126 of the judgment it is held that the judgments are of three types :

- (1) a final judgment
- (2) a preliminary judgment and
- (3) intermediary or interlocutory judgment.

While considering the scope of Order VII, Rule 11, Para 129 of the judgment is reproduced :--

"The idea underlying Order 7, Rule 11 -A is that when no cause of action is disclosed, the Courts will not unnecessarily protract the hearing of a suit, having regard to the changes in the legislative policy as adumbrated by the amendments carried out in the Code of Civil Procedure, the Courts would

interpret the provisions in such a manner so as to save expenses, achieve expedition, avoid the Court's resources being used up on cases which will serve no useful purpose. A litigation which in the opinion of the Court is doomed to fail would not further be allowed to be used as a device to harass a litigant."

The petitioner has filed writ petition praying therein that the respondents be directed not to interfere with the possession of petitioner over the land bearing Survey No. 652/1 village Mahalgaon, City Centre, Gwalior and in case the house and boundary wall of the petitioner is demolished, pending petition the same shall be directed to be restored because petitioners have claimed right over the disputed land. The claim of petitioner was opposed by the respondents. Respondents/Municipal Corporation came forward with a specific plea that petitioners have made unauthorised construction and wall is constructed over the disputed land. Objection was also raised by the intervenor that petitioner has closed the rights of way and obstructed the movements of the people in the colony. Counsel for the petitioner submitted that there are earlier orders in favour of the petitioner. However, on perusal of record, we find that the Single Bench has not adjudicated the dispute and has held that there are serious disputed questions of facts are involved in this petition. Adjudication of such dispute is not possible in this petition. Petitioner was, therefore, directed to resort to remedy available to him by filing a suit and seeking injunction in the matter. Single Bench without entering into the controversy or deciding the right of the parties, dismissed the petition. Since the rights of the parties have not been adjudicated, the order will not fall in the category of judgment. This order will not fall in the three categories mentioned in the case of *Liverpool and London S.P. and I. Association Ltd.* (supra). There is no adjudication of rights of the parties. Since there is no decision on the merits or on the rights of the parties, order is not a judgment within the meaning of Clause 10 of Letters Patent. The single Bench simply directed the petitioner to approach the proper forum and rights of the parties have not been adjudicated. Therefore, in our opinion the order will not fall within the meaning of term "judgment" in Clause 10 of the Letters Patent. We hold that this appeal is not maintainable and is dismissed. The appellant, if so advised, may approach the proper forum for grant of injunction. There shall be no order as to costs.