

(1959) 03 AHC CK 0030

In the Allahabad High Court

Case No : Supreme Court Appeal No. 66 of 1959

District Board, Allahabad

APPELLANT

Vs

S. Tahir Husain and Others

RESPONDENT

Date of Decision : 05-03-1959

Acts Referred:

Allahabad High Court Rules, 1952 — Rule 26
Civil Procedure Code, 1908 (CPC) — Order 45 Rule 3(1), 109, 110
Constitution of India, 1950 — Article 132, 133, 133(1), 226

Citation : AIR 1959 All 572

Hon'ble Judges : O.H. Mootham, C.J.;Raghubar Dayal, J;A.P. Srivastava, J

Bench : Full Bench

Advocate : Krishna Shankar, for the Appellant; Bashir Ahmad, J. Swarup and Standing Counsel, for the Respondent

Final Decision : Disposed Of

Judgement

Mootham, C.J.—An application for leave to appeal to the Supreme Court under Articles 132 and 133 of the Constitution came on for hearing before a Bench of this Court on 27-1-1959. A preliminary objection was then taken on behalf of the respondents that the application, so far as it was for a certificate under Article 133, was defective and could not be entertained by the Court as the applicant had failed to state in his prayer the specific clause or clauses of Article 133(1) under which he asked for a certificate; and reliance was placed upon the unreported decision of Desai and Beg, JJ., in *Azimun-nissa v. Assistant Custodian, Evacuee Properties, Dcoria*, Supreme Court Appeal No. 68 of 1957, decided on 15-11-1957. The Bench was of opinion that the preliminary objection raised a question of practical importance which it was desirable should be considered by a larger Bench.

2. The application was for leave to appeal to the Supreme Court from an order of this Court dated 4-12-1957, dismissing an appeal from an order of Mr. Justice Raghubar Dayal dated 23-3-1955, allowing a petition under Article 226 of the

Constitution. The application contained a statement of the relevant facts in narrative form. It then enumerated ten grounds upon which leave to appeal was sought and concluded with a prayer which reads thus :

"It is therefore most respectfully prayed that this Hon"ble Court may be pleased to certify that this is a fit case for appeal to the Supreme Court under Articles 132 and 133 of the Constitution."

In Azimunnissa's case the prayer was that "the Court be pleased to certify that the case was a fit one for appeal to the Supreme Court" and it is clear that leave was in fact sought on the ground that the case was a fit one for appeal within the meaning of Clause (c) of Article 133(1), The Court refused to grant a certificate on that ground whereupon learned Counsel for the applicants asked the Court to grant a certificate on the ground that the order against which leave to appeal was sought involved directly or indirectly some claim or question respecting property of the value of not less than Rs. 20,000. The Court declined however to do so as not only was there no assertion in the application that the order involved a claim on question respecting property of that value but that there was no prayer, express Or implied, for the grant of such a certificate.

3. We are of opinion that the question which has been referred to this Court can be disposed of very shortly. If the application which arises out of an order made in exercise of the Court's powers under Article 226 of the Constitution is an application which is governed by the provisions of the Code of Civil Procedure, then Rule 3 (1) of Order 45, applies *proprio vigore* : if the application is not governed by the provisions of the Code, Rule 26 of Chap. XXIII of the Rules of Court comes into play, and this rule provides that in all such cases the provisions of Order 45 shall, so far as may be, and with such adaptations and modifications as may be found necessary, apply.

4. Now Rule 3 (1) of Order 45, which deals with appeals to the Supreme Court, provides that :

"(1) Every petition shall state the grounds of appeal and pray for a certificate either that, as regards amount or value and nature, the case fulfils the requirements of Section 110, Or that it is otherwise a fit one for appeal to the Supreme Court."

The requirements of Section 110 are that :

"the amount or value of the subject-matter of the suit in the Court of first instance must be twenty thousand rupees or upwards, and the amount or value of the subject-matter in dispute on appeal to the Supreme Court must be the same Or upwards,

or the judgment, decree or final order must involve, directly or indirectly, some claim or question to or respecting property of like amount or value,

and where the judgment, decree or final order appealed from affirm the decision

of the Court immediately below the Court passing such judgment, decree or final order, the appeal must involve some substantial question of law."

These requirements are embodied in Clauses (a) and (b) and the concluding sentence of Article 133(1); the alternative requirement of Order 45, Rule 3(1) that the case is otherwise a fit one for appeal is embodied in Clause (c) of Article 133(1).

5. In our opinion the plain meaning of Rule 3 (1), Order 45, in its application to a petition under Article 133(1) is that the petition, in addition to stating the grounds of appeal, must contain a prayer which clearly states the provision or provisions of that Article under which a certificate is asked for. A prayer in general terms for a certificate under Article 133 does not in; our judgment comply with the rule, and we are accordingly of opinion that the prayer in the present case, in so far as a certificate is asked for under that Article, is defective; and that unless and until it is amended the application for a certificate under this Article is not entertainable. We answer the reference accordingly.