

**(2014) 12 SHI CK 0147**

**In the High Court Of Himachal Pradesh**

**Case No :** LPA No. 216 of 2014 a/w LPA Nos. 217, 218, 219, 220, 221, 222, 223 and 224 of 2014

Federal Mogul Bearing India Ltd.

APPELLANT

Vs

Prit Pal

RESPONDENT

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**Date of Decision :** 31-12-2014

**Acts Referred:**

Civil Procedure Code, 1908 (CPC) — Order 43 Rule 1, Order 49 Rule 3, 104, 117, 2  
Industrial Disputes Act, 1947 — Section 33(2)  
Land Acquisition Act, 1894 — Section 54

**Citation :** (2015) 2 ShimLC 837

**Hon'ble Judges :** Mansoor Ahmad Mir, C.J.; Tarlok Singh Chauhan, J

**Bench :** Division Bench

**Advocate :** Rahul Mahajan, Advocate for the Appellant; V.D. Khidtta, Advocate for the Respondent

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## Judgement

Tarlok Singh Chauhan, J.—The appellant(s) by medium of these appeals has challenged the order passed by the writ court on 17.11.2014, which is as follows:

CWP's No. 3441, 3442, 3443, 3444, 3878, 3879, 3881, 3883, 3884 of 2012

"Services of the workmen in the above writ petitions have been terminated during the course of conciliation proceedings before Labour Officer-cum-Conciliation Officer. Thus, the employer is directed to reinstate the workmen. The workmen so reinstated/re-engaged will not involve themselves in any Union activities and will not cause any problem in the premises of the workplace. The employer will be at liberty to impose stringent conditions to avoid vitiating of industrial peace in the factory premises.

To ensure that no trouble is caused by the re-engaged workmen, Labour Officer-cum-Conciliation Officer, Solan will visit the premises fortnightly and submit his report to this Court.

CWP's No. 3441 to 3444, 3878 to 3881, 3883 to 3885, 4084 and 9215 of 2012

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Parties are also directed to explore possibility of amicable settlement outside the Court in view of this order.

List the cases for hearing in the first week of January 2015."

2. It is contended that the aforesaid order is not sustainable in the eyes of law as it amounts to granting main relief which the respondents would otherwise be entitled to if the writ petitions were to be dismissed. The order has been challenged on various other grounds as taken in the memo of appeal.

Undisputedly, the writ petitions are pending before the learned writ Court and have been fixed for hearing in the first week of January, 2015.

3. We have heard learned counsel for the parties and perused the records.

4. Clause 10 of the Letters Patent Appeal, as applicable to Himachal Pradesh, reads thus:

"10. Appeals to the High Court from Judges of the Court-And we do further ordain that an appeal shall lie to the said High Court of Judicature at Lahore from the judgment (not being a judgment passed in the exercise of appellate jurisdiction in respect of a decree or order made in the exercise of appellate jurisdiction by a Court subject to the Superintendence of the said High Court, and not being an order made in the exercise of revisional jurisdiction, and not being a sentence or order passed or made in the exercise of the power of Superintendence under the provisions of Section 107 of the government of India Act, or in the exercise of criminal jurisdiction) of one Judge of the said High Court or one Judge of any Division Court, pursuant to Section 108 of the Government of India Act, and that notwithstanding anything hereinbefore provided an appeal shall lie to the said High Court from a judgment of one Judge of the said High Court or one Judge of any Division Court, pursuant to Section 108 of the Government of India Act, made on or after the first day of February, one thousand nine hundred and twenty-nine in the exercise of appellate jurisdiction in respect of a decree or order made in the exercise of appellate jurisdiction by a Court subject to the superintendence of the said High Court where the Judge who passed the judgment declares that the case is a fit one for appeal; but that the right of appeal from other judgments of Judges of the said High Court or of such Division Court shall be to Us, Our heirs or Successors in our or their Privy Council, as hereinafter provided."

5. Plain reading of Clause 10 makes it clear that an appeal is competent from the decision of a Single Bench provided such decision falls within the ambit of "judgment".

Therefore, moot question which arises for consideration is as to whether the impugned order falls within the ambit of "judgment".

6. The word "judgment" has been considered in detail and explained by the Hon"ble Supreme Court in Shah Babulal Khimji Vs. Jayaben D. Kania and

Another, in the following terms

"106. Thus, the only point which emerges from this decision is that whenever a Trial Judge decides a controversy which affects valuable rights of one of the parties, it must be treated to be a judgment within the meaning of the Letters Patent.,

113. Thus, under the Code of Civil Procedure, a judgment consists of the reasons and grounds for a decree passed by a court. As a judgment constitutes the reasons for the decree it follows as a matter of course that the judgment must be a formal adjudication which conclusively determines the rights of the parties with regard to all or any of the matters in controversy. The concept of a judgment as defined by the Code of Civil Procedure seems to be rather narrow and the limitations engrafted by sub-s. (2) of s. 2 cannot be physically imported into the definition of the word "judgment" as used in cl. 15 of the Letters Patent because the Letters Patent has advisedly not used the term "order" or "decree" anywhere. The intention, therefore, of the givers of the Letters Patent was that the word "judgment" should receive a much wider and more liberal interpretation than the word "judgment" used in the Code of Civil Procedure. At the same time, it cannot be said that any order passed by a Trial Judge would amount to a judgment; otherwise there will be no end to the number of orders which would be appealable under the Letters Patent. It seems to us that the word "judgment" has undoubtedly a concept of finality in a broader and not a narrower sense. In other words, a judgment can be of three kinds:.

(1) A Final Judgment-A judgment which decides all the questions or issues in controversy so far as the trial Judge is concerned and leaves nothing else to be decided. This would mean that by virtue of the judgment, the suit or action brought by the plaintiff is dismissed or decreed in part or in full. Such an order passed by the Trial Judge indisputably and unquestionably is a judgment within the meaning of the Letters Patent and even amounts to a decree so that an appeal would lie from such a judgment to a Division Bench.

(2) A preliminary judgment-This kind of a judgment may take two forms-(a) where the trial Judge by an order dismisses the suit without going into the merits of the suit but only on a preliminary objection raised by the defendant or the party opposing on the ground that the suit is not maintainable. Here also, as the suit is finally decided one way or the other, the order passed by the trial Judge would be a judgment finally deciding the cause so far as the Trial Judge is concerned and therefore appealable to the larger Bench. (b) Another shape which a preliminary judgment may take is that where the trial Judge passes an order after hearing the preliminary objections raised by the defendant relating to maintainability of the suit, e.g., bar of jurisdiction, res Judicata, a manifest defect in the suit, absence of notice under section 80 and the like, and these objections are decided by the Trial Judge against the defendant, the suit is not terminated but continues and has to be tried on merits but the order of the trial Judge rejecting the objections doubtless adversely affects a valuable right of the

defendant who, if his objections are valid, is entitled to get the suit dismissed on preliminary grounds. Thus, such an order even though it keeps the suit alive, undoubtedly decides an important aspect of the trial which affects a vital right of the defendant and must, therefore, be construed to be a judgment so as to be appealable to larger Bench.

(3) Intermediary or Interlocutory judgment—Most of the interlocutory orders which contain the quality of finality are clearly specified in clauses (a) to (w) of order 43 Rule 1 and have already been held by us to be judgments within the meaning of the Letters Patent and, therefore, appealable. There may also be interlocutory orders which are not covered by O. 43 R. 1 but which also possess the characteristics and trappings of finality in that, the orders may adversely affect a valuable right of the party or decide an important aspect of the trial in an ancillary proceeding. Before such an order can be a judgment the adverse effect on the party concerned must be direct and immediate rather than indirect or remote. For instance, where the trial Judge in a suit under order 37 of the Code of Civil Procedure refuses the defendant leave to defend the suit, the order directly affects the defendant because he loses a valuable right to defend the suit and his remedy is confined only to contest the plaintiff's case on his own evidence without being given a chance to rebut that evidence. As such an order vitally affects a valuable right of the defendant it will undoubtedly be treated as a judgment within the meaning of the Letters Patent so as to be appealable to a larger Bench. Take the converse case in a similar suit where the trial Judge allows the defendant to defend the suit in which case although the plaintiff is adversely affected but the damage or prejudice caused to him is not direct or immediate but of a minimal nature and rather too remote because the plaintiff still possesses his full right to show that the defence is false and succeed in the suit. Thus, such an Order passed by the trial Judge would not amount to a judgment within the meaning of cl. 15 of the Letters Patent but will be purely an interlocutory order.

Similarly, suppose the trial Judge passes an Order setting aside an ex parte decree against the defendant, which is not appealable under any of the clauses of O. 43 R. 1 though an order rejecting an application to set aside the decree passed ex parte falls within O. 43 R. 1, cl. (d) and is appealable, the serious question that arises is whether or not the order first mentioned is a judgment within the meaning of Letters Patent. The fact, however, remains that the order setting aside the ex-parte decree puts the defendant to a great advantage and works serious injustice to the plaintiff because as a consequence of the order, the plaintiff has now to contest the suit and is deprived of the fruits of the decree passed in his favour. In these circumstances, therefore, the order passed by the trial Judge setting aside the ex parte decree vitally affects the valuable rights of the plaintiff and hence amounts to an interlocutory judgment and is therefore, appealable to a larger Bench.

119. Apart from the tests laid down by Sir White, C.J., the following

considerations must prevail with the court:

(1) That the Trial Judge being a senior court with vast experience of various branches of law occupying a very high status should be trusted to pass discretionary or interlocutory orders with due regard to the well settled principles of civil justice. Thus, any discretion exercised or routine orders passed by the trial Judge in the course of the suit which may cause some inconvenience or, to some extent, prejudice one party or the other cannot be treated as a judgment otherwise the appellate court (Division Bench) will be flooded with appeals from all kinds of orders passed by the Trial Judge. The courts must give sufficient allowance to the trial Judge and raise a presumption that any discretionary order which he passes must be presumed to be correct unless it is *ex facie* legally erroneous or causes grave and substantial injustice.

(2) That the interlocutory order in order to be a judgment must contain the traits and trappings of finality either when the order decides the questions in controversy in an ancillary proceeding or in the suit itself or in a part of the proceedings.

(3) The tests laid down by Sir White, C.J. as also by Sir Couch, C.J. as modified by later decisions of the Calcutta High Court itself which have been dealt with by us elaborately should be borne in mind."

7. The matter was subsequently considered by the Hon"ble Supreme Court in a number of decisions and we may with advantage refer to the observations made by the Hon"ble Supreme Court in *Subal Paul Vs. Malina Paul and Another*, :

"32. While determining the question as regards clause 15 of the Letters Patent, the court is required to see as to whether the order sought to be appealed against is a judgment within the meaning thereof or not. Once it is held that irrespective of the nature of the order, meaning thereby whether interlocutory or final, a judgment has been rendered, clause 15 of the Letters Patent would be attracted.

33. The Supreme Court in *Shah Babulal Khimji* 's case (*supra*) deprecated a very narrow interpretation on the word "judgment" within the meaning of clause 15.

34. This Court said: (SCC pp. 45-46, para 82)

"A court is not justified in interpreting a legal term which amounts to a complete distortion of the word "judgment" so as to deny appeals even against unjust orders to litigants having genuine grievances so as to make them scapegoats in the garb of protecting vexatious appeals. In such cases, a just balance must be struck so as to advance the object of the statute and give the desired relief to the litigants, if possible."

35. In *Shah Babulal Khimji* 's case (*supra*), the Apex Court in no uncertain terms referred to the judgment under the Special Act which confers additional jurisdiction to the High Court even in internal appeals from an order passed by

the Trial Judge to a larger Bench. Letters Patent has the force of law. It is no longer res Integra. Clause 15 of the Letters Patent confers a right of appeal on a litigant against any judgment passed under any Act unless the same is expressly excluded. Clause 15 may be subject to an Act but when it is not so subject to the special provision the power and jurisdiction of the High Court under Clause 15 to entertain any appeal from a judgment would be effective.

38. The decision of this Court in Shah Babulal Khimji 's case (supra) has been considered in some details by a Special Bench of the Calcutta High Court in M/s. Tanusree Art Printers and Another Vs. Rabindra Nath Pal, . It was pointed out: (CHN p. 233, para 67)

"If the right of appeal is a creature of a statute, the same would be governed by the said statute. Whether an appeal under Clause 15 of the Letters patent will be maintainable or not when the matter is governed by a Special Statute will also have to be judged from the scheme thereof, (e.g. despite absence of bar, a Letters Patent appeal will not be maintainable from a judgment of the learned Single Judge rendered under the Representation of People Act.)"

39. It was pointed out that in Shah Babulal Khimji's case (supra) this Court posed three questions namely: (CHN p. 227, para 42)

"(1) Whether in view of clause 15 of the Letters Patent an appeal under section 104 of the Code of Civil Procedure would lie? (2) Whether clause 15 of the Letters Patent supersedes Order 43 Rule 1 of the code of Civil Procedure? (3) Even section 104 of the CPC has no application, whether an order refusing to grant injunction or appoint a receiver would be a judgment within the meaning of Clause 15 of the Letters Patent?"

40. The Apex Court answered each of them from a different angle: (CHN p. 227, para 43)

(a) Section 104 of the Code of Civil Procedure read with Order 43 Rule 1 expressly authorizes a forum of appeal against orders falling under various clauses of Order 43 Rule 1 to a Larger Bench of a High Court without at all disturbing interference with or overriding the Letters Patent jurisdiction.

(b) Having regard to the provisions of Section 117 and Order 49 Rule 3 of the Code of Civil Procedure which excludes various other provisions from the jurisdiction of the High Court, it does not exclude Order 43 Rule 1 of the CPC.

(c) There is no inconsistency between section 104 read with Order 43 Rule 1 and the appeals under Letters Patent, as Letters Patent in any way does not exclude or override the application under section 104 read with Order 43 Rule 1 which shows that these provisions would not apply in internal appeals within the High Court "

47. In Prataprai N. Kothari Vs. John Braganza, , even in a suit for possession only not based on title, a letters patent appeal was held to be maintainable.

48. The decision of this Court in *Sharda Devi Vs. State of Bihar*, is also to the same effect, wherein in para 9 it was held: (SCC p. 709)

"9. A Letters patent is the charter under which the High Court is established. The powers given to a High Court under the Letters Patent are akin to the constitutional powers of a High Court. Thus when a Letters Patent grants to the High Court a power of appeal, against a judgment of a Single Judge, the right to entertain the appeal would not get excluded unless the statutory enactment concerned excludes an appeal under the Letters Patent."

49. Section 54 of the Land Acquisition Act, 1894 provides for an appeal before the High Court and thereafter to the Supreme Court and despite the same it was held that a letters patent appeal under clause 15 would be maintainable."

8. In *Midnapore Peoples' Co-op. Bank Ltd. and Others Vs. Chunilal Nanda and Others*, the Hon'ble Supreme Court held that the term "judgment" occurring in clause 15 of the Letters Patent will take into its fold not only the judgments as defined in Section 2(9) CPC and orders enumerated in Order 43 Rule 1 CPC, but also other orders which, though may not finally and conclusively determine the rights of parties with regard to all or any matters in controversy, may have finality in regard to some collateral matter, which would affect the vital and valuable rights and obligations of the parties. It is apt to reproduce paras 15 and 16 of the report, which reads thus:

"15. Interim orders/interlocutory orders passed during the pendency of a case, fall under one or the other of the following categories:

- (i) Orders which finally decide a question or issue in controversy in the main case.
- (ii) Orders which finally decide an issue which materially and directly affects the final decision in the main case.
- (iii) Orders which finally decide a collateral issue or question which is not the subject matter of the main case.
- (iv) Routine orders which are passed to facilitate the progress of the case till its culmination in the final judgment.
- (v) Orders which may cause some inconvenience or some prejudice to a party, but which do not finally determine the rights and obligations of the parties.

16. The term "judgment" occurring in clause 15 of the Letters Patent will take into its fold not only the judgments as defined in Section 2(9) CPC and orders enumerated in Order 43 Rule 1 CPC, but also other orders which, though may not finally and conclusively determine the rights of parties with regard to all or any matters in controversy, may have finality in regard to some collateral matter, which will affect the vital and valuable rights and obligations of the parties. Interlocutory orders which fall under categories (i) to (iii) above, are, therefore "judgments" for the purpose of filing appeals under the Letters Patent. On the other hand, orders falling under categories (iv) and (v) are not "judgments" for

the purpose of filing appeals provided under the Letters Patent."

9. On the basis of the aforesaid exposition of law, it can safely be concluded that in order to fall within the meaning of "judgment" under Clause 10 of the Letters Patent Appeal, the order must contain the traits and trappings of finality either by deciding questions in controversy in ancillary proceeding or in the petition itself or in a part of the proceedings and such an adjudication must also decide and affect the rights of parties. It has also to be borne in mind that every intermediary or interlocutory order cannot be regarded as "judgment" but only such orders which decide or affect the rights of the parties and put to an end or terminate the proceedings can be treated as "judgment". The effect, rather than the form, of the adjudication has to be looked into, and if so done, the order appealed against is nothing but a step towards a final adjudication. What must be looked into is general nature and effect of the order and the same has to be judged by the test as to whether adjudication of rights, proceedings are terminated if it is not so, such an order would not be a judgment within the meaning of Clause 10.

10. Coming to the facts of this case, it would be seen that in the writ petition preferred by the appellant(s) the award passed by the Industrial Tribunal-cum-Labour Court, Shimla (for short "Tribunal") under Section 33(2) of the Industrial Disputes Act, read with Rule 64 (2) of the H.P. Industrial Disputes Rules, 1974 has been assailed. The appellant(s) had approached the Tribunal for approval of their action in respect of dismissing the services of the respondents. This application came to be dismissed by the learned Tribunal and the respondents were ordered to be reinstated in service alongwith back wages @ 25%.

11. A perusal of the impugned order reveals that the respondents-workmen have been ordered to be reinstated with the condition that they will not involve themselves in any Union activities and would also not cause any problem in the premises of the workplace. At the same time, the appellant(s) has been granted liberty to impose stringent conditions on the workmen so that the respondents do not vitiate industrial peace in the factory premises. Not only this, the Labour Officer-cum-Conciliation Officer, Solan has been directed to oversee this arrangement and has been directed to visit the premises fortnightly and submit his report.

12. The appellant(s) has taken exception to this order by claiming that the order though on the face of it appears to be interlocutory but in fact it grants the main relief which the respondents would otherwise be entitled to if the writ petitions were ordered to be dismissed and, therefore, the order would fall within the ambit of "judgment" and, therefore, the appeal is competent.

13. In support of his submission, the appellant(s) has relied upon the judgment of the Hon"ble Supreme Court in State of Rajasthan and Others Vs. Swaika Properties and Another, , State of Jammu & Kashmir Vs. Mohd. Yaqoob Khan and Others, , Bank of Maharashtra Vs. Race Shiping and Transport Co. Pvt. Ltd. and



another, , P.R. Sinha and Others Vs. Inder Krishan Raina and Others, , Union of India (UOI) and Others Vs. Modiluft Ltd., and State of Uttar Pradesh and Others Vs. Ram Sukhi Devi, .

14. We have gone through these judgments. The sum and substance of these judgments is that the Hon'ble Supreme Court has time and again deprecated the practice of granting interim orders which practically give the principal relief sought in the petition for no better reason than that of a prima facie case having been made out, without considering the balance of convenience, the public interest and a host of other considerations.

15. There is no quarrel with the aforesaid proposition of law, but at the same time, we fail to understand as to how the ratio of the same is applicable to the facts of the present case. Admittedly, it is the appellant, who happens to be the writ petitioner on whose asking the impugned order has been passed. The settled position of law is that the Courts are not to grant interim orders which practically give principal relief sought in the petition but the converse is not true. Meaning thereby that the appellant cannot be heard to complain that since the interim order on its asking has been passed, the same virtually amounts to dismissal of the petition itself. Further, the appellant cannot, as a matter of right, claim interim relief in its favour much less dictate the mode and manner in which interim relief is to be granted. Even otherwise, interim orders passed by the learned writ Court would not govern the consideration for final relief and if found necessary, effect of interim order can always be reversed by way of restitution.

16. That apart, the impugned order does not determine the rights or liabilities of the parties affecting the merits of the controversy and, therefore, cannot be termed to be a "Judgment".

17. Having perused the impugned order, we have no hesitation to hold that the impugned order is a just, fair and equitable order calling for no interference. The learned writ Court had discretion to pass the impugned order and it cannot be said that such discretion has been exercised arbitrarily, capriciously, perversely or has been passed by ignoring the well settled principles of law.

18. Above all, the learned writ Court after taking into consideration the urgency of the matter has directed these cases to be listed for hearing in the first week of January, 2015. In such circumstances, we fail to understand that even if assuming that the impugned order is a judgment against which the present appeal is maintainable, even then, what prejudice and in what manner the rights of the appellant(s) have been effected so as to afford it a cause of action to file the present appeals. Having said so, we have no hesitation to conclude that these appeals are nothing but an abuse of process of the Court wherein the appellant(s) has sought to drag the hapless and helpless workmen into unwanted, unwarranted and otherwise avoidable litigation.

Accordingly, all these appeals are dismissed. Though this was a fit case for imposing cost, we refrain from doing so since we have not issued notice to the

opposite party and the counsel for the respondents has put in appearance of his own. The pending applications, if any, are also disposed of. The Registry is directed to place a copy of this judgment on the files of connected matters.