

(1988) 04 AP CK 0034

In the Andhra Pradesh High Court

Case No : Letters Patent Appeal No. 94 of 1988

Ghantasala Seshamma and others

APPELLANT

Vs

Gollapalli Rajaratnam and another

RESPONDENT

Date of Decision : 18-04-1988

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 43 Rule 1, 104, 104(1), 104(2)

Citation : AIR 1990 AP 19

Hon'ble Judges : Jayachandra Reddy, J; Bhaskar Rao, J

Bench : Division Bench

Advocate : M.L. Narasimha Reddy, for the Appellant; M.S.R. Subrahmanyam and M.S.N. Murthy, for the Respondent

Judgement

Jayachandra Reddy, J.—A very important question is again canvassed before us in this L.P.A, before admission. The question is: Whether a Letters Patent Appeal lay to a Division Bench against an appellate order of a single Judge in an appeal under Order 43, Rule I, C.P.C. read with Section 104(1). CPC and whether Sec. 104(2), CPC was a bar to the maintainability of a Letters Patent Appeal under Clause 15 of the Letters Patent?

2. In Amruthappa Vs. Abdul Rasool, , Jagannadha Rao, J. considered this question and he referred the judgments of various High Courts including the Bombay and Allahabad High Courts. One very important decision referred to by the learned Judge is Shah Babulal Khimji v. Jayaben, AIR 1981 SC 1786. The matter was argued before the learned Judge by a senior counsel and looks as though it is argued thoroughly and the learned Judge, after considering all the decisions and particularly relying on the ratio laid down in the Shah Babulal Khimji's case (supra), held that such a L.P.A. does not lie. In L.P.A. No. 14;88 a similar question was considered by us and by our order dated 16-2-1988. We agreed with the view taken by Jagannatha Rao, J.

3. In the present L.P."A. the learned counsel for the appellants submits that the Supreme Court did not in so many words lay down that a L.P.A. does not lie

under those circumstances; but on the other hand there are observations to the effect that a L.P.A. under those circumstances is maintainable. His submission again made us to go through the whole gamut of the reasoning given by the Supreme Court in Shah Babulal Khimji's case (supra). In that case the main judgment was delivered by Fazal Ali, J. (for himself and on behalf of A. Varadarajan, J.) and all the decisions rendered earlier by the Madras and Allahabad High Courts were also referred to and a careful reading of the judgment does not leave any doubt. However as contended by the learned counsel for the appellants, in certain passages there are indications that an appeal under Letters Patent Act lies. But these observations have to be understood in the background of the question that was considered by their Lordships viz., whether an appeal lie against an order by a single Judge of the High Court exercising original diction. But the question before us is different. So far this question is concerned, the ultimate conclusion of their Lordships is that a L.P.A. does not lie in view of the bar of S. 104(2). C.P.C.

4. It may not be necessary for us to deal further or deal with the various decisions referred to by the Supreme Court and Jagan-nadha Rao. J.

5. We may also add that a Division Bench of the Bombay High Court in Obedur Rehman and Another Vs. Ahmedali Bharucha and Others, . has categorically laid down that a L.P.A. against an order of a learned single Judge., dismissing appeal filed under S. 104, C.P.C. against order refusing to grant temporary injunction, is not maintainable. In arriving at such a conclusion the Division Bench has placed reliance on the judgment of the Supreme Court in Shah Babulal Khimji Vs. Jayaben D. Kania and Another, .

6. The learned counsel for the appellants however relies on a judgment of Madras High Court in Rukmani and Others Vs. H.N. Thirumalai Chettiar, . The Division Bench of Madras High Court following a judgment reported in V. S. Boopathy Chet-nar v. Radha Rukmani. 1984"TLNJ 92, however held that against an order passed by a single Judge under S. 104(1)- C.P.C pending an, appeal, L.P.A. is maintainable. The Madras High Court has not referred to the decision of the Supreme Court in Shah Babulal K'himji (supra) which has exhaustively dealt with this aspect. We are unable to agree with the view taken by the Division Bench of Madras.

7. In the result the LPA fails and it is (accordingly dismissed. No costs.

8. Appeal dismissed.