

(1973) 11 DEL CK 0026

In the Delhi High Court

Case No : Supreme Court Application No's. 104 and 105 of 1973

Gopi Krishan Khanna and Others

APPELLANT

Vs

Kailash Wati and Others

RESPONDENT

Date of Decision : 16-11-1973

Acts Referred:

Citation : AIR 1975 Delhi 38

Hon'ble Judges : R.N. Aggarwal, J;Prakash Narain, J

Bench : Division Bench

Advocate : G.S. Yohra and C.S. Duggal, for the Appellant; Radhey Lal Aggarwal and Arun Kumar, for the Respondent

Final Decision : Dismissed

Judgement

R.N. Agarwal, J.—These are two applications (S. C. A. 104 and S. C. A. 105 of 1973) by the appellants petitioners under Order 45, Rule 2, Civil P. C. and Article 135 of the Constitution of India read with Sections 109 and 110, Civil P. C. for a certificate for appeal to the Supreme Court against the judgments and decrees of this Court in R. F. A. 172-D , R. F. A. 173-D of 1962. or in the alternative under Article 133 of the Constitution for a certificate that the appeals involve a substantial question of law of general importance and needs to be decided by the Supreme Court.

2. The relevant facts for the decision of these applications are that on 24th June. 1947, Harish Chandra and Kailash Chander plaintiffs had entered into a partnership with the S) to do business in metal works in the name and style of Zenith Metal Works, Rohtak Road, Delhi. The partnership commenced its business in July, 1947. In 1949 dispute arose between the parties, On 8th January, 1949. the plaintiffs filed Suit No. 259/1949 for dissolution of the partnership and rendition of accounts. On 25th January. 1949. The defendant (Radha Kishan Khanna) consented to the passing of a preliminary decree. On 14th February. 1949, the Court Passed a Preliminary decree dissolving the Partnership, with effect from 25th January, 1949, and for rendition of accounts.

One Shri Raghbir Singh Gupta, Advocate was appointed as the Receiver/Commissioner to take into possession the assets of the Partnership and to go into the accounts. On July 1, 1951, the plaintiffs filed suit No. 151/1951 for recovery of the loan of Rs. 50,000/- which had been advanced by them to the defendant for being invested in the Partnership business. In addition to the Principal amount, the plaintiffs claimed Rs. 7,500/- as interest and future interest at the rate of 6% from the date of the suit till realisation. Both these suits were tried together. Mr. Raghbir Singh Gupta submitted his ex parte report on 9th October, 1950. The said report was set aside on 4th July, 1955 and Shri S. N. Chopra, Advocate was appointed as Commissioner. Shri Chopra submitted his report on 9th January, 1957. Both the Parties filed objections to the report of the Commissioner. Shri Chopra.

3. The trial Judge after considering the objections of the Parties passed a decree for a sum of Rs. 57,500/- in Civil Suit No. 151/251 of 1951/1961 and a decree for Rs. 50,666/11/11 in Suit No. 2591 262 of 1949/1961 against the defendant. The defendant was further to pay interest at the rate of 6 % from the date of institution of the suit till realisation on the amount of Rs. 50,000/- (loan amount) and interest at the rate of 6 per cent from the date the plaintiffs made good the court-fee till realisation in Suit No. 262 of 1961. Against the judgments and decrees of the trial Judge the defendant appealed. (RFA 172-D/62 in Suit No. 262 of 1961 and Rfa 173-D/62 in Suit No. 251 of 1961). The plaintiffs Preferred cross appeal No. 192-D of 1962 in Suit No. 262 of 1961. The appeals were originally filed in the Punjab High Court. On October 31, 1966, the Delhi High Court Act, 26 of 1966 came into force and the High Court of Delhi came into existence. The appeals were transferred to the High Court of Delhi under the Provisions of Section 12 of the same Act. The appeals were heard and decided by us on May 23, 1973. Appeal No. 173-D of 1962 was dismissed with costs. In appeal No. 172-D of 1962 the decree passed by the trial Judge was reduced to Rs. 45,584/1/10. The cross-appeal filed by the plaintiffs was also dismissed. The parties were left to bear their own costs in R. F. As. 172-D and 192-1) of 1962.

4. It will be convenient at this stage to refer to the statutory Provisions relating to appeals from any final judgment, decree or order of a High Court in India to a superior Court. Clause 29 of the Letters Patent Constituting the High Court of Judicature at Lahore dated the 21st March, 1919, as applicable to the Delhi High Court, Provides that an appeal shall lie to His Majesty in Council from any final judgment decree or order of the High Court made in an appeal or in exercise of original jurisdiction by the Judges of the said High Court or of any Division Court provided in either case that the sum or matter at issue is of the amount or value of not less than 10,000 rupees or that such judgment, decree or order involved directly or indirectly, some claim demand or question to or respecting property amounting to or of the value of not less than 10,000 rupees or from any other final judgment, decree or order made either on appeal or otherwise as aforesaid, when the said High Court certifies that the case is a fit one for appeal to His Majesty in Council. The requirements to be fulfilled for appeal to His Majesty in

Council were also set out in Sections 109 and 110 of the Code of Civil Procedure, 1908. The Government of India Act, 1935 by Section 200 established a Federal Court of India. Section 204 of the Act gave original jurisdiction to the Federal Court. Section 205 of the Act conferred appellate jurisdiction on Federal Court in appeals, and provided that an appeal shall lie to the Federal Court from any judgment decree or final order of a High Court (in British India) if the High Court certifies that the case involves a substantial question of law as to interpretation of this Act or any Order in Council made there under and prohibited direct appeal to His Majesty in Council either with or without special leave in those matters. The Federal Court (Enlargement of Jurisdiction) Act No. 1 of 1948 Provided that as from the appointed date i.e. February 1, 1948, are appeal would lie to the Federal Court from any judgment to which the Act without the special leave of the Federal Court if an appeal could have been brought to His Majesty in Council without special leave under the Provisions, of the Code of Civil Procedure, 1908, or of any other law in force immediately before the appointed day and with the special leave of the Federal Court in any other case and no direct appeal shall lie to His Majesty in Council either with or without special leave from any such judgment. This was followed by the Abolition -of Privy Council Jurisdiction Act 1949 (Act No. V of 1949) which was Passed by the Constituent Assembly in September, 1949. and came into force on October 10, 1949 which was referred to as the appointed day. Section 2 Pro vided that as from the appointed day the jurisdiction of His Majesty in Council to entertain, the an-peals and petitions from or in respect of any judgment, decree or order of any Court or Tribunal (other than the Federal Court within the territory of India, including, appeals and -petitions in respect of criminal matters, whether such jurisdiction is exercisable by virtue of His Majesty's -prerogative or otherwise, shall cease. Section 5 conferred corresponding jurisdiction on the Federal Court that is to say as from the appointed day. the Federal Court was authorised in addition to the jurisdiction conferred on it by the Government of India Act 1935, and the Federal Court (Enlargement of Jurisdiction) Act No. I of 1948 to have the same jurisdiction to entertain and dispose of Indian appeals and petitions as His Majesty in Council has by virtue of His Majesty's prerogative or otherwise, immediately before the appointed day. All Proceedings in respect of any Indian appeals pending be fore His Majesty in Council immediately before the appointed day were to stand transferred to the Federal Court and to be disposed of by it in the exercise of the jurisdiction conferred on it by this Act.

5. On 26th January, 1950, the Constitution of India came into force. Article 133 defines the appellate jurisdiction of the Supreme Court in appeals from High Courts in regard to civil matters.

The relevant Portion of the Article reads as:-

"133. (1) An appeal shall lie to the Supreme Court from any judgment, decree or final order in a civil proceeding of a High Court in the territory of India if the High Court certifies-

(a) that the amount or value -of the subject-matter of the dispute in the Court of first instance and still in dispute on appeal was and is not less than twenty thousand rupees or such other sum as may be specified in that behalf by Parliament bylaw; or

(b) that the judgment decree or final order involves directly or indirectly some claim or question respecting property of the like amount or value: or

(c) that the case is a fit one for appeal to the Supreme Court;

and, where the judgment decree or final order appealed from affirms the decision of the Court immediately below in any case other than a case referred to in sub-clause (c), if the High Court further certifies that the appeal involves some substantial question of law."

6. The Constitution (Thirtieth Amendment) Act, 1972 which came into force on 22nd February 1973. made amendment in Article 133 of the Constitution. Article 133 as amended by the 30th Amendment of the Constitution reads as:-

"(1) An appeal shall lie to the Supreme Court from any judgment, decree or final order in a civil proceeding of a High Court in the territory of India if the High Court certifies-

(a) that the case involves a substantial question of law of general importance: and

(b) that in the opinion of the High Court the said question needs to be decided by the Supreme Court."

3. (1) Nothing in this Act shall affect -

(a) any appeal under sub-clause (a) or sub-clause N or sub-clause (c) of clause (1) of Article 133 of the Constitution which immediately before the commencement of this Act was Pending before the Supreme Court; or

(b) any appeal Preferred on or after the commencement of this Act against any judgment, decree or final order in a civil proceeding of a High Court by view of a certificate given by the High Court before the recommencement of this Act under sub-clause (a) or sub-clause (b) -or sub-clause (c) of clause (1) of Art. 133 and every such appeal may be heard and disposed of or as the case may be entertained heard and disposed of by the Supreme Court as if this Act had not been passed.

(2) Subject to the Provisions of subsection (1), no appeal shall lie to the Supreme Court under clause (1) of Article 133 of the Constitution from any judgment, decree or final order arising Out of a suit or other civil proceeding which was instituted or commenced in any Court before the commencement of this Act unless such appeal satisfies the provisions of that clause as amended by this Act,"

7. Mr. Vohra, learned counsel for the petitioners contended that suit No.

259/1949 for dissolution of Partnership and rendition of -accounts -was instituted before the commencement of the Constitution and the Parties thereto had from the date of institution of the suit a vested right of appeal upon the terms and conditions then in force and that the judgment sought to be appealed from is a judgment of reversal and the value of the subject-matter is above Rs. 10,000/-, and Therefore, the petitioners have a vested right of appeal to the Federal Court (now Supreme Court) under the pro-visions of the old CPC read with the Government of India Act, 1935 and the Federal Court (Enlargement of Jurisdiction) Act. 1948. The counsel further contended that the said vested right of appeal is a matter which does not fall within Article 133 and jurisdiction and powers with respect to such right of appeal were exercisable by the Federal Court immediately before the commencement of the Constitution and consequently, the Petitioners under Article 135 are as of right entitled to appeal to the Supreme Court. The counsel in support of his contention relied on Garikapatti Veeraya Vs. N. Subbiah Choudhury, ,

8. The facts in the cited case were that the respondent therein had instituted a suit on April 22, 1949 in the sub-court of Bapatla which was then within the Jurisdiction of the Madras High Court. The trial Court on November 14, 1950, dismissed the suit. The plaintiff appealed. On October 1, 1953, the Andhra State was formed and a new High Court was established u/s 28 of the Andhra State Act, 1953 (Act Xxx of 1953). The appeal was transferred to the High Court of Andhra under the Provisions of Section 38 of the same Act. On March 4, 1955 the High Court of Andhra accepted the appeal reversed the decree of the trial Court and decreed the suit. The application for leave to appeal to the Supreme Court was dismissed on the ground, inter alia, that the value of the Property was only Rs. 11,400/- and did not come up to the amount of Rs. 20,000/-. The petitioner therein appealed to the Supreme Court for special leave to appeal.

9. The contention raised before their Lordships was that as from the date of the institution of the suit, the Parties thereto had acquired a vested right of appeal to the Federal Court which has since then been replaced by the Supreme Court. The Chief Justice S. R. Das speaking, for the majority view held:-

"Where the suit has been instituted before the date of the Constitution the parties thereto have, from the date of the institution of the suit, a vested right of appeal upon terms and conditions then in force and where the judgment sought to be appealed from is a judgment of a reversal and the value of the subject-matter is above Rs. 10,000/- the aggrieved party has, a vested right of appeal to the Federal Court under the provisions of the old CPC read with the Government of India Act, 1935, and the Federal Court (Enlargement of Jurisdiction) Act. 1948. Such a vested right of appeal is a matter which does not fall within Article 133 and jurisdiction and powers with respect to such right of appeal were exercisable by the Federal Court immediately before the commencement of the Constitution and consequently the aggrieved party has a right of appeal under Article 135. The aggrieved Party is entitled under Article 135 to come up on

Appeal to the Supreme Court as of right and where such right has been wrongly denied to him the Supreme Court would be pre-pared to grant him special leave to appeal under Art. 136 of the Constitution."

10. If the law had stood as enunciated by the Supreme Court, there can be little doubt that the Petitioners would, have been entitled to the certificate prayed for. The thirtieth amendment of the Constitution has substantially narrowed down the appellate jurisdiction of the Supreme Court in appeals from High Courts in regard to civil matters. It will be seen from sub-section (2) of Art, 133 of the Constitution, as amended that it has created an absolute bar to an appeal under the said Article to the Supreme Court unless such appeal satisfies the requirements of Article 133(1) . Under the amended Article 133(1) an appeal lies to the Supreme Court from any judgment, decree or final order in a civil Proceeding of a High Court, if the High Court certifies that the case involves a substantial question of law of general importance and that in the opinion of the High Court the said question needs to be decided by the Supreme Court. The vested right of appeal whatever it was has been specifically taken away by the Thirtieth Amendment to the Constitution. The language employed in sub-section (2) of Article 133 shows that Article 133(1) has been given retrospective effect and now a right of appeal to the Supreme Court in a suit or other civil proceeding which was instituted or commenced in any Court before the 30th Amendment came into force would be governed by)Art. 133(1) as amended.

11. Mr. Vohra in support of his contention had relied upon Art. 135 of the Constitution, which reads:-

"135. Until Parliament by law otherwise Provides, the Supreme Court shall also have jurisdiction and Powers with respect to any matter to which the Provisions of Article 133 or Article 134 do not apply if jurisdiction and powers in relation to that matter were exercisable the Federal Court immediately before the commencement of this Constitution under any existing law."

12. We are of the view that Article 135 can be of no avail to the petitioners. It is clear from a reading of Article 135 that it has application to only those matters to which the provisions of Article 133 or 134 do not apply. The amended Article 133 is applicable to all the suits or other civil proceedings which had been instituted or commenced in any Court before the commencement of the 30th amendment to the Constitution. In the Garikapatti Veeraya Vs. N. Subbiah Choudhury, a distinction has been drawn by their Lordships in proceedings or suits that have been instituted before the commencement of the Constitution and t e one which had been instituted or commenced after the Constitution. Their Lordships were of the view that Art. 133 is not -applicable to judgments, decrees and final orders passed in Proceedings which had been instituted before the commencement of the Constitution and those proceedings were governed b-v the old CPC read with the Government of India Act, 1935 and the Federal Court (Enlargement of Jurisdiction) Act, 1948. In view of the amendment this distinction no longer exists and Article 133 has been given retrospective effect. Even otherwise, the

opening words of Art. 135 "until Parliament by law otherwise provides" show that the Parliament is competent to limit jurisdiction and Powers of the Supreme Court contemplated therein. By the 30th Amendment to the Constitution the Parliament has made it clear that the appeals to the Supreme Court would lie only in cases which satisfy the requirements laid down in Article 133(1) of the Constitution as amended.

13. In the above view, before the petitioners will be entitled to the certificate prayed for, they will have to satisfy that the judgments and the decrees against which an appeal is sought to be taken to the Supreme Court involve a substantial question of law of general importance and which in the opinion of the High Court needs to be decided by the Supreme Court. The decision in the appeals R. F. A. Nos. 172-D and 173-D of 1962 largely turned on an appreciation of evidence. The appeals in our view do not involve any substantial question of law of general importance which needs to be decided by the Supreme Court.

14. It may be stated that it was not disputed by the learned counsel for the respondents that the judgment in appeal No. 172-D of 1962 against which an appeal is sought to be taken to the Supreme Court is not a judgment of finance.

15. For the reasons recorded earlier, we are of the view that the applications, do not satisfy the requirements of Article 133(1) of the Constitution, as amended. The applicators are, Therefore, dismissed. However, we leave the Parties to bear their own costs.

16. Applications dismissed.